

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

----- :
: PHILIP MCHUGH, :
: :
Plaintiff, :
: CASE NO. 1:21-CV-00238
vs. :
: :
FIFTH THIRD BANCORP, et :
al., :
: :
Defendants. :
----- :

VOLUME I

Videotaped
Deposition of: Gregory Carmichael
Taken: By the Plaintiff
Date: September 26, 2023
Time: Commencing at 9:40 a.m.
Place: Fifth Third Center
511 Walnut Street,
Cincinnati, Ohio 45202
Before: Sydney Jackson
Notary Public - State of Ohio

1 APPEARANCES:

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22 Also Present:

23 Philip R. McHugh
24 Phenise Poole, Esq., Fifth Third Bancorp
25 Brian C. Thomas, Esq., Fifth Third Bancorp

I N D E X

Gregory Carmichael

PAGE

Examination by Peter A. Saba

5

EXHIBITS

MARKED

REFERENCED

Exhibit 1	10	10
Exhibit 2	29	29
Exhibit 3	36	36
Exhibit 4	88	88
Exhibit 5	110	110
Exhibit 6	113	113
Exhibit 7	114	114
Exhibit 8	120	120
Exhibit 9	122	122
Exhibit 10	124	124
Exhibit 11	127	127
Exhibit 12	130	130
Exhibit 13	132	132
Exhibit 14	140	140
Exhibit 15	152	152
Exhibit 16	155	155
Exhibit 17	177	177
Exhibit 18	201	201
Exhibit 19	203	203
Exhibit 20	212	212
Exhibit 21	212	212
Exhibit 22	223	223
Exhibit 23	229	229
Exhibit 24	230	230
Exhibit 25	242	242
Exhibit 26	244	244
Exhibit 27	252	252
Exhibit 28	253	253
Exhibit 29	254	254
Exhibit 30	258	258
Exhibit 31	260	260
Exhibit 32	260	260

<p>1 THE VIDEOGRAPHER: Today is September 26, 2 2023, the time is 9:40 a.m. We're on the record in 3 the deposition of Gregory D. Carmichael for the 4 case pending in the United States District Court, 5 Southern District of Ohio, Western Division, titled 6 Philip R. McHugh versus Fifth Third Bancorp., et 7 al, case number 1:21-CV-00238. At this time, all 8 counsel present and will introduce themselves for 9 the record.</p> <p>10 MR. SABA: On behalf of the plaintiff, Philip 11 McHugh, Peter Saba.</p> <p>12 MR. SMITH: On behalf of the plaintiff, Joshua 13 Smith.</p> <p>14 MR. CIOFFI: Peter, before I introduce myself, 15 would you state for the record if there's anyone 16 participating by Zoom or video or otherwise for 17 this deposition?</p> <p>18 MR. SABA: Currently I think there is at least 19 one -- there is one monitoring by Zoom. There's 20 one monitoring by Zoom. Is there a second one on, 21 Sydney? There's one attorney from our office, 22 Bailey Wharton.</p> <p>23 MR. CIOFFI: As long as it's attorneys only 24 because of some confidential information in the 25 protective order, things like that, as we've</p>	<p>Page 4</p>	<p>1 A. Probably about mid 2005, 2006. 2 Q. Why did you have your deposition taken? 3 A. I was asked about one e-mail in an individual 4 that had left the company. 5 Q. Fifth Third, is that the company you're 6 referring to? 7 A. Yes. 8 Q. What type of claim was made by the employee 9 that left the company? 10 A. I don't recall what the claim was. 11 Q. Do you know if it was a claim against Fifth 12 Third? 13 A. I believe it was a claim against Fifth Third, 14 yes. 15 Q. Do you know where that case was filed? 16 A. I do not. 17 Q. As a reminder, I'm going to be asking you a 18 series of questions. If there's anything you don't hear 19 or understand, please feel free to ask me to repeat or 20 rephrase the question. For the sake of the court 21 reporter -- we're taking this via video -- I need you to 22 answer verbally. No shaking or nodding of the head, 23 uh-uhs or uh-huhs. It's difficult for her to take that 24 down. 25 Additionally, if you could wait for me to</p>	<p>Page 6</p>
<p>1 discussed before.</p> <p>2 MR. SABA: That's fine. John McHugh may join.</p> <p>3 MR. CIOFFI: All right. If that changes, we 4 can just put it on the record.</p> <p>5 MR. SABA: Right.</p> <p>6 MR. CIOFFI: Just so we know.</p> <p>7 On behalf of the defendants, Michael Cioffi 8 and Collin Hart of Blank Rome.</p> <p>9 MR. THOMAS: Brian Thomas for Fifth Third.</p> <p>10 MS. POOLE: Phenise Poole for Fifth Third.</p> <p>11</p> <p>12 GREGORY CARMICHAEL</p> <p>13 of lawful age, a defendant herein, being first duly 14 sworn as hereinafter certified, was examined and deposed 15 as follows:</p> <p>16</p> <p>17 EXAMINATION</p> <p>18 BY MR. SABA:</p> <p>19 Q. Mr. Carmichael, could you state your name for 20 the record, please, and spell your last name?</p> <p>21 A. Gregory D. Carmichael, C-A-R-M-I-C-H-A-E-L.</p> <p>22 Q. Have you ever had your deposition taken 23 before?</p> <p>24 A. I have.</p> <p>25 Q. When have you had your deposition taken?</p>	<p>Page 5</p>	<p>1 finish my question before you answer, and I'll try to do 2 the same before I ask another question. It makes for a 3 clear record.</p> <p>4 Do you understand all those instructions?</p> <p>5 A. Yes.</p> <p>6 Q. Could you give me your address, please?</p> <p>7 A. 3 Abbington Ridge, Cincinnati, Ohio 45242.</p> <p>8 Q. How long have you lived there?</p> <p>9 A. Approximately 20 years.</p> <p>10 Q. Who do you live there with?</p> <p>11 A. Currently my wife, Sarah Carmichael.</p> <p>12 Q. How long have you been married?</p> <p>13 A. 35 years.</p> <p>14 Q. What did you do to prepare for today's 15 deposition?</p> <p>16 A. Met with my attorneys.</p> <p>17 Q. Did you review any documents in preparation 18 for today's deposition?</p> <p>19 A. Those provided to me by my attorneys.</p> <p>20 Q. Did you discuss this case with anybody at 21 Fifth Third other than attorneys?</p> <p>22 A. No.</p> <p>23 Q. Have you ever discussed this litigation with 24 anyone at Fifth Third other than attorneys?</p> <p>25 A. No.</p>	<p>Page 7</p>

<p>Page 8</p> <p>1 Q. Have you ever discussed this case with anyone</p> <p>2 outside Fifth Third other than attorneys?</p> <p>3 A. No.</p> <p>4 Q. Have you had discussions with anyone at Fifth</p> <p>5 Third about Phil McHugh since this litigation began?</p> <p>6 A. Would you ask the question again, please?</p> <p>7 Q. Yes. Have you had discussions with anyone</p> <p>8 about Phil McHugh at Fifth Third since this litigation</p> <p>9 began? I'm talking about other than your attorneys.</p> <p>10 A. I don't recall if I've had any conversations</p> <p>11 or anything. I would have talked to Susan Zaunbrecher</p> <p>12 about this. She is an attorney, but she knows about the</p> <p>13 status of the case. I would have had that conversation.</p> <p>14 Q. What about anyone besides Susan Zaunbrecher?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Did you ever have any conversations with Bob</p> <p>17 Shaffer about this litigation?</p> <p>18 MR. CIOFFI: By way of objection, you mean</p> <p>19 outside the presence of lawyers?</p> <p>20 MR. SABA: Outside the presence of counsel.</p> <p>21 MR. CIOFFI: Yeah, if counsel's present.</p> <p>22 THE WITNESS: If counsel's present, I'm okay?</p> <p>23 MR. CIOFFI: Yeah. You should not answer the</p> <p>24 question. You should just say counsel was present.</p> <p>25 THE WITNESS: Counsel was present.</p>	<p>Page 10</p> <p>1 Q. That's the Royal Bank of Scotland; is that</p> <p>2 correct?</p> <p>3 A. The Royal Bank of Canada.</p> <p>4 Q. Royal Bank of Canada, excuse me.</p> <p>5 What is your role with the Royal Bank of</p> <p>6 Canada?</p> <p>7 A. EVP. I'm the executive chair of the USA</p> <p>8 National Bank Company.</p> <p>9 Q. What are your duties there?</p> <p>10 A. Oversee strategy, direction, operations.</p> <p>11 (Exhibit 1 is marked for identification.)</p> <p>12 BY MR. SABA:</p> <p>13 Q. Mr. Carmichael, I've handed you what's been</p> <p>14 marked as Exhibit Number 1. Can you identify that for</p> <p>15 me, please?</p> <p>16 A. Appears to be my bio as of March 31, 2022.</p> <p>17 Q. That's your bio of your employment at Fifth</p> <p>18 Third Bank; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Take me through the history of your employment</p> <p>21 with Fifth Third.</p> <p>22 A. I started Fifth Third back in 2003, as the</p> <p>23 chief information officer, took on additional</p> <p>24 responsibilities of operation. 2006, I became chief</p> <p>25 operating officer. I believe 2011 or '12, I became the</p>
<p>Page 9</p> <p>1 BY MR. SABA:</p> <p>2 Q. Have you had any discussions about Phil McHugh</p> <p>3 with Bob Shaffer since this litigation began, outside</p> <p>4 the presence of counsel?</p> <p>5 A. I do not believe so.</p> <p>6 Q. And by "conversations," I'm also referring to</p> <p>7 any e-mails, text messages, any other communications</p> <p>8 with Mr. Shaffer about Phil McHugh since this litigation</p> <p>9 began.</p> <p>10 A. I believe I got a text message yesterday, good</p> <p>11 luck on the deposition, something to that extent. That</p> <p>12 would have been a communication.</p> <p>13 Q. What about any other communications with</p> <p>14 anyone else about Phil McHugh since this litigation,</p> <p>15 whether through text messaging, e-mail, or otherwise?</p> <p>16 A. Not that I can recall.</p> <p>17 Q. What's the extent of your education?</p> <p>18 A. Undergrad degree in computer science. I got a</p> <p>19 master's degree in business administration.</p> <p>20 Q. Where did you obtain this?</p> <p>21 A. University of Dayton for the undergrad,</p> <p>22 Central Michigan University for the graduate degree.</p> <p>23 Q. Are you employed?</p> <p>24 A. Effective September 21st of this year, I am</p> <p>25 now employed by RBC, the bank.</p>	<p>Page 11</p> <p>1 president, then the CEO in 2015. Then probably chairman</p> <p>2 -- if I read this -- roughly 2018.</p> <p>3 Q. You became president in September 2012; is</p> <p>4 that correct?</p> <p>5 A. Yes. Correct.</p> <p>6 Q. And you stayed in that position until October</p> <p>7 2020, when you were succeeded by Mr. Spence; is that</p> <p>8 correct?</p> <p>9 A. For the bank president, yes.</p> <p>10 Q. Okay. That's the position I'm talking about</p> <p>11 is president at Fifth Third Bank; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. You were appointed to the board of directors</p> <p>14 in July of 2015; is that correct?</p> <p>15 A. I'd have to go back and look at that, Counsel.</p> <p>16 It may have been 2012, when I became president. Let me</p> <p>17 see if it's in my bio.</p> <p>18 Q. Well, go ahead and refer to your bio, then.</p> <p>19 I'm referring to the third full paragraph down, third</p> <p>20 sentence. It says he was appointed to the board of</p> <p>21 directors in July of 2015. Do you see that?</p> <p>22 A. Okay, then it was 2015; it was not 2012.</p> <p>23 Correct.</p> <p>24 Q. And you remained on the board until July of</p> <p>25 2022; is that correct?</p>

<p>1 A. No. I would have remained on the board as 2 the executive chair until I stepped down to shareholder 3 meeting this year, in the April timeframe. 4 Q. So just to clarify your relationship with the 5 board, you first went on the board July of 2015, 6 correct? 7 A. Yes. 8 Q. You became CEO in November 2015; is that 9 right? 10 A. Correct. 11 Q. Okay. And your role as CEO ended July of 12 2022; is that correct? 13 A. It ended July 5th of 2022, correct. 14 Q. And you were replaced by -- or succeeded by 15 Mr. Spence, at that time, as CEO; is that correct? 16 A. That is correct. 17 Q. You were elected chairman of the board in 18 January of 2018; is that right? 19 A. Yes. 20 Q. And then you became -- how long did you remain 21 chairman of the board? 22 A. Until I stepped down in July -- I'm sorry, 23 April of this year. 24 Q. But your title changed from chairman of the 25 board to executive chairman of the board; is that</p>	<p>Page 12</p> <p>1 the board communications, board preparation, materials 2 were sent to the board appropriately, feedback from our 3 lead director on items that the board wanted to hear 4 about, talk about; send the agenda based on the account 5 of events that needed to take place, coordinated that; 6 receiving feedback from the lead director after the 7 board meetings on things that the board would like to 8 see or questions or concerns the board would like to 9 have addressed; other points in the next meeting itself. 10 That's basically the responsibilities of the chairman. 11 Q. Going back to my question for a second, there 12 was a period of time where you just were a member of the 13 board and then you became CEO? 14 A. Correct. 15 Q. And then you became chairman of the board. 16 Distinguish for me your duties as being merely a member 17 of the board and then CEO, and then chairman. 18 A. When I was appointed to the board as a board 19 member, oftentimes you'll see, in corporate America, 20 where you have other members of the executive team that 21 are on and appointed to the board itself. I was 22 appointed to the board, but I really had no board 23 responsibilities. I wasn't considered an independent, 24 so I didn't have voting responsibilities of that nature, 25 and I was just an executive that was on the board, not</p>
<p>1 correct? 2 A. Correct. Still the chairman, but became the 3 executive chairman, which is basically a non-independent 4 position because it's executive chairman. 5 Q. Explain to me the difference between being a 6 chairman of the board and executive chairman of the 7 board. 8 A. Executive chairman, you're employed by the 9 company. It's not -- in a lot of cases obviously -- I 10 was already non-independent, but it would be a -- it 11 would not be independent. The responsibilities would be 12 to continue to make sure that I provide oversight, 13 strategic input to the executive team, support for the 14 CEO, and oversight for the board. 15 Q. Going back to your role as president, what 16 were your duties as president of Fifth Third Bank? 17 A. Oversee the -- most of the -- what I'll call 18 the P&L -- profit and loss -- operation of the bank, so 19 line of businesses, the markets themselves, the regions. 20 So basically everything except for the staff positions 21 are typically responsibilities that I had as president. 22 Q. And what were your duties as the member of the 23 board of directors? 24 A. Well, I was the chair of the board, so 25 therefore, I had responsibilities for making sure that</p>	<p>Page 13</p> <p>1 independent, not part of any of the committees. I was 2 there more for input and support of the executive team 3 to the board. 4 Q. And then how does that distinguish from when 5 you became CEO? 6 A. Nothing changed when I became CEO but my 7 responsibilities as the CEO. I'm still on the board. 8 My board responsibilities evolve, as the CEO, to the 9 board, so the CEO has certain responsibilities to the 10 board itself. 11 I was then -- as CEO, I would have had 12 conversations with the chairman at that time after the 13 board meeting. Any -- once again, input from the board 14 after the board meeting, he would want me to hear that 15 input. I was responsible obviously for making sure 16 that the materials that was going to be presented to the 17 board, the subject matters going to be covered. Once 18 again, that's all calendar-based or being coordinated, 19 and as the CEO that became my responsibility versus just 20 being on the board when I wasn't the CEO. 21 Q. You said that, as CEO, you're responsible for 22 providing materials to the board. What materials were 23 you providing to the board? 24 A. There was a significant amount of materials 25 that were provided to the board. Once again, this was</p> <p>Page 14</p> <p>Page 15</p>

<p>Page 16</p> <p>1 all driven by the calendar events that had to take place 2 throughout the year. It's driven by requirements of the 3 regulations in front of us. It's risk-related 4 information, it's our related information, it's even 5 capital information, it's strategic information, it's 6 operational performance, it's regulatory data against 7 regulatory requirements.</p> <p>8 It's everything you would think of to run a 9 bank in a structured format. That information has to be 10 provided to the board in a very coordinated fashion, 11 based on a calendar of events and points in time in the 12 year. And at the end of the day, we try to provide that 13 information to the board as, you know, hopefully a week 14 ahead of time, but typically it goes out on Thursday.</p> <p>15 So making sure that all that information was 16 put out on to our platform that we use -- It's called 17 Diligent, making sure that information was available on 18 Diligent at the right time.</p> <p>19 So just a typical responsibility of the CEO to 20 make sure that the different entities that prepare that 21 information have it done and complete and available to 22 the board so they have time to digest it prior to coming 23 in to the board meeting itself.</p> <p>24 Q. And what information, with respect to your 25 duties as CEO, would you provide to the board with</p>	<p>Page 18</p> <p>1 time with the board on that subject matter. Because 2 it's -- it's the most important thing the board does, 3 succession planning, putting the CEO in place, removing 4 the CEO; it's the most important job. They take it very 5 seriously, and we allocate a lot of time to do that in 6 December. It's the primary objective of the December 7 meeting, is to go through that talent discussion.</p> <p>8 Q. And what materials do you provide to the board 9 at that December meeting with respect to CEO and 10 president succession planning?</p> <p>11 A. It's well documented, and I think if you ask 12 Bob, he can provide that information for you if you 13 don't already have it. But there's a -- there's a -- 14 there's a document that we presented to him that goes 15 through the whole succession planning process, kind of 16 to break the glass. It talks about emergency sessions, 17 talks about, you know, the process to the -- to a 18 permanent successor in the event that an emergency 19 successor is needed. It defines the different 20 alternatives that a board can evaluate for an emergency 21 successor. And then I go through talent cards of each 22 of my leadership team.</p> <p>23 Q. And what is your role in putting those 24 materials together?</p> <p>25 A. Well, it's a partnership of myself and the</p>
<p>Page 17</p> <p>1 respect to CEO and president's succession planning?</p> <p>2 A. The information that gets provided to the 3 board -- ask me the question one more time, please.</p> <p>4 Q. With respect to your duties as CEO, what 5 information would you provide to the board with respect 6 to president and CEO succession planning?</p> <p>7 A. That would be done in December timeframe, at 8 an executive session of the board. It's a structured 9 meeting. It's on the calendar. We do it every single 10 year, where I go through my executive team and we talk 11 about succession planning for my team. We also then 12 talk about emergency succession plan for the CEO. It's 13 an orchestrated process. It's a requirement by the 14 regulators, a requirement by the oversight governance 15 entities that exist out there that we have succession 16 planning. It's something that's extremely important.</p> <p>17 But that's presented at that time. The 18 process itself for succession planning of the CEO, and 19 the information used to support that succession planning 20 process, such as emergency successors, or in the now 21 successors, those type of things will all be presented 22 at that December meeting, and that happens annually at 23 that period of time with the board.</p> <p>24 And that's really, like I think about it at 25 the time, the only time I really spend that type time of</p>	<p>Page 19</p> <p>1 human capital team. Bob Shaffer led that for me at that 2 period of time. So my job would be to make sure, at 3 the end of the day, that the information that we're 4 providing to the board in that context is reflective of 5 how I feel about the individuals in the organization, 6 feedback that I received from the board in prior 7 discussions, performance against that feedback, progress 8 against that feedback over -- since the last time we had 9 that discussion, and making sure we identify potential 10 emergency successors in the event that the board needs 11 those options. That's a board decision. My job would 12 be to make sure that information was correct, to the 13 best of my ability reflects my views and the views 14 that I want to put forth to the board. It's also part 15 of the conversations I've had with the board in prior 16 talent management discussions and feedback they might 17 provide to me throughout the year, if there's feedback 18 from individuals after other sessions with my management 19 team at the board sessions. They could provide me 20 feedback.</p> <p>21 I bring all that together and I prepare with 22 Bob Shaffer and his team the talent management cards and 23 review the succession planning documentation.</p> <p>24 Q. Going back to 2019, who are the other people 25 on the human capital team besides Bob Shaffer?</p>

<p>Page 20</p> <p>1 A. I don't know the whole team. Bob is the one 2 I -- Bob's the only one, quite frankly, that I interact 3 with on this subject, that I can recall. I don't recall 4 working with anybody else. It's primarily Bob. 5 Bob works with this team, and at that time, 6 I'm not sure who was in what role and had what 7 responsibilities. I would be making assumptions and I 8 don't want to do that. Bob Shaffer was my primary 9 contact in those discussions. 10 Q. You mentioned feedback from the other 11 directors throughout the year; is that right? 12 A. Yes. 13 Q. As far as this process, how was that feedback 14 communicated to you? 15 A. It's not necessarily part of the process, but 16 it occurs. So I will get feedback after -- after 17 the individuals on my board, on my management team 18 present to the board. I could get feedback through the 19 lead director afterwards. I could get feedback from 20 another member of the board throughout -- after that 21 session or a phone call later, or at the next board 22 meeting, that feedback can come forth. 23 Once again, I've strongly encouraged all my 24 board members to work closely with my team, interact 25 with my team. They have their information, their</p>	<p>Page 22</p> <p>1 Physically, what was the method of communication of the 2 feedback? 3 A. Thank you for clarification. 4 I would -- I don't recall that I received 5 things -- anything in writing. They obviously wouldn't 6 text me. There might be an e-mail; I don't recall an 7 e-mail. But I will tell you, my recollection would be 8 it was always verbal. 9 Q. You referred to "my team." Who are you 10 referring to when you refer to "my team"? We'll focus 11 on the 2019 timeframe. 12 A. It would have been the executive -- 13 the executive team, my enterprise team. Refer to them 14 as the enterprise. 15 Q. The enterprise committee? 16 A. Yes. 17 Q. And you indicated there would be one-on-one 18 meetings from the board and different members of your 19 team. You gave two examples, human capital compensation 20 and the head of an audit. What other one-on-one 21 meetings are you aware of between -- from board members 22 and members of the enterprise committee? 23 A. Um, risk and compliance. I would imagine the 24 head of risk would have -- would -- would have 25 conversations with different board members. Chief</p>
<p>Page 21</p> <p>1 contact information. Members of the board often 2 schedule meetings with -- if you're the chair of the 3 Union Cap committee or you're the chair of the audit 4 committee, it's very common for them to set up special 5 meetings, individual one-on-one meetings with the head 6 of audit or the head of HCC on my team. I encourage 7 that. That gives them direct access to get to know 8 those individuals, something that I'm very proud of, 9 that's very transparent. 10 So conversations happen all throughout the 11 year with different members on my executive team and the 12 board without me in it. I'll often get feedback on, 13 hey, great conversation. Really enjoyed this or that, 14 or learned this. 15 So those type of things happen throughout the 16 year, normal course of business between the board and 17 interacting with the executive team. I did not want 18 information only funneled through myself; I wanted to 19 make sure they had complete access to my executive team, 20 and they took full advantage of that. 21 Q. With respect to that feedback, how would it be 22 communicated to you? 23 A. I just -- I think I answered that. 24 Q. Well, my question is, was it always verbal? 25 Was it in e-mails? Was it in text messages?</p>	<p>Page 23</p> <p>1 credit officer could have conversations with different 2 board members. Once again, I didn't -- I didn't corral 3 that type of communication; I encouraged it. I wasn't 4 required to be communicated to when they were reaching 5 out to any member of my team. I would get feedback and 6 sometimes potentially I wouldn't get feedback. 7 Once again, we tried to -- we tried to make 8 sure the board had access, especially committee chairs, 9 to the individuals that would be a counterpart of my 10 enterprise team. For instance, the HCC would be Bob 11 Shaffer, the -- whoever was running audit at the time 12 would be the person who was the chair. I would want to 13 talk to that individual. 14 So I encouraged that. I wouldn't always be 15 aware that the conversation was happening. I would 16 sometimes get feedback. So you know, we have a -- now 17 we have a technology committee, and I know Jorge, who 18 chairs that committee, has oftentimes reached out to 19 Jude Schramm directly, asking for clarification, talking 20 about trends in the industry, things he might like to 21 see at the next board meeting that he thinks are 22 relevant. 23 We do a lot of external education, so maybe 24 want to talk about that things of that nature. 25 That necessarily doesn't all get back to me. But it</p>

<p>1 could through Jude. Jude might stop by and say, hey, I 2 talked to Jorge. Here's what was on his mind. I'd say 3 fantastic. That kind of communication, it's very 4 informal and encouraged to make sure that my board 5 members have complete access and transparency to my 6 enterprise team.</p> <p>7 Q. The feedback that you would receive from 8 various directors throughout the year, would you make 9 notes of any of that feedback?</p> <p>10 A. I don't believe I would make a note of 11 something of that nature.</p> <p>12 Q. The head of risk would be the chief risk 13 officer; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. What are the duties of the chief risk officer?</p> <p>16 A. Well, the duties can change based on whether 17 they have -- they have credit reportings or not. 18 Oftentimes, you know, you might find the chief risk 19 officer does not have -- or the chief credit officer 20 reporting to him. Chief credit officer could report 21 directly to the CEO, so that duty could have inflow 22 depending the individual in that role and -- and how the 23 role is structured.</p> <p>24 But its overall responsibilities is to provide 25 -- as the role states, You know, risk management for the</p>	<p>Page 24</p> <p>1 regulatory risk. You can go down the list. Financial 2 performance, capital risks, liquidity risk.</p> <p>3 Q. Who was the chief risk officer in 2019?</p> <p>4 A. I believe in 2019 -- I don't have my 5 enterprise chart in front of me -- but I believe that 6 would have been -- 2019 -- Frank Forrest.</p> <p>7 Q. You mentioned the position of COO. What are 8 the duties of the COO?</p> <p>9 A. Well, that, once again, is dependent on the 10 organization. The COO, by design, that title can mean a 11 lot of things and have a lot of things reporting to it. 12 It's -- it's -- it's a position that we've had at 13 certain times and we haven't had at certain times.</p> <p>14 So depending on the point in time, it could 15 have different entities and different elements of the 16 organization reporting into it. So I couldn't give you 17 any -- any more information than that. It depends on 18 the point in time, the needs of the organization, talent 19 in the organization; that job can be structured 20 accordingly.</p> <p>21 Q. Who would the COO typically report to?</p> <p>22 A. If the COO and president was -- was one -- was 23 one combined role, as it was in the majority of my 24 tenure, that COO would report probably most likely to 25 the CEO and president.</p>
<p>Page 25</p> <p>1 organization. So at the end of the day, the bank is in 2 the business to take risks and making sure those risks 3 are well identified, understood, mitigating factors are 4 put in place if necessary, anything and everything 5 related to oversight of our risk tolerance.</p> <p>6 So there's a risk framework that's put in 7 place. There's risk tolerances that are put in place. 8 There's monitoring mechanisms put in place. There's 9 dashboards that are prepared for the board that they see 10 how we're performing against some of those risk metrics 11 that's presented to the board. So this individual would 12 have responsibility and oversight not just for the 13 methodology, but how the business is performing and 14 being measured against that methodology that is 15 performed, KPIs and so forth. This individual would be 16 responsible for oversight in that, and also working with 17 the lines of businesses to make sure that they have the 18 right risk metrics put in place and they're monitoring 19 appropriately.</p> <p>20 Q. The risk you're talking about is financial 21 risk?</p> <p>22 A. No, there's -- there's many risks in the 23 organization. There's -- I think we identify eight or 24 nine different risks. You know, reputational risk would 25 be an example of a risk that a bank would take on,</p>	<p>Page 26</p> <p>1 Q. And if the COO and president are separate 2 roles, who would the COO report to?</p> <p>3 A. Could report -- could report to the president, 4 could report to the CEO also, once again, based on the 5 organizational needs.</p> <p>6 Q. There was a period of time when you were with 7 Fifth Third that COO was a separate position, correct?</p> <p>8 A. I'm not sure of the question. You say 9 separate position?</p> <p>10 Q. Just to clarify, you indicated before that you 11 held the role of COO prior to holding the role of 12 president. You weren't necessarily holding both at the 13 same time initially; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. So the -- the role of COO was a separate 16 position at that point in time when you held it?</p> <p>17 A. It became a separate position at that time. 18 Oftentimes -- I believe, in that period of time, you -- 19 at one point, you would have had a CEO/president, and a 20 COO/president; it would have been one role. They broke 21 it out, I believe -- I'm not quite sure what the 22 organizational -- if we -- if -- if the title was there 23 with the president or not, but I believe my predecessor, 24 at the time I was named COO, was president/COO, and then 25 that COO title went to me in 2006. I believe that's how</p>

<p>1 that occurred, but I'm not positive.</p> <p>2 Q. Who did you report to when you were COO, then?</p> <p>3 A. When I became COO, initially it would have</p> <p>4 been Kevin Kabat. He was the president and then became</p> <p>5 CEO a year later. So depending on the timing, I believe</p> <p>6 it was Kevin Kabat, then -- then Kevin became the CEO in</p> <p>7 2000, I want to say, late '6 or early '7, somewhere</p> <p>8 around there.</p> <p>9 Q. What is your understanding of the duties of</p> <p>10 the chief human resources officer?</p> <p>11 A. Oversees human capital responsibilities for</p> <p>12 the corporation in total.</p> <p>13 Q. At Fifth Third, who does the chief human</p> <p>14 resources officer report to?</p> <p>15 A. It could vary -- and it has varied --</p> <p>16 throughout the years. In my case, here in 2019, then</p> <p>17 human capital -- human capital officer reported to</p> <p>18 myself, Greg Carmichael.</p> <p>19 Q. And who was the chief human resources officer</p> <p>20 at that time?</p> <p>21 A. Bob Shaffer.</p> <p>22 Q. Mr. Carmichael, were you aware that you filed</p> <p>23 a counterclaim against Phil McHugh as a result of him</p> <p>24 filing claims of age discrimination against you?</p> <p>25 A. Yes.</p>	<p>Page 28</p> <p>1 MR. SABA: I'm asking about the factual --</p> <p>2 MR. CIOFFI: As opposed to legal claims.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Did you review the factual allegations for</p> <p>5 accuracy?</p> <p>6 A. I believe the claim -- the counterclaim itself</p> <p>7 and what's in this document is accurate and correct when</p> <p>8 I reviewed it.</p> <p>9 Q. If I could refer you to page 20, paragraph</p> <p>10 number 5. Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. It indicates, since August 2018, plaintiff</p> <p>13 Philip McHugh was employed by Fifth Third as executive</p> <p>14 vice president and head of Fifth Third regional bank.</p> <p>15 Is that right?</p> <p>16 A. That's what it says, correct.</p> <p>17 Q. What would have been Phil McHugh's duties as</p> <p>18 head of regional banking?</p> <p>19 A. The head of regional banking, it's a position</p> <p>20 that -- that five different people held over ten years.</p> <p>21 We use it as a opportunity, a developmental opportunity.</p> <p>22 It's more of an administrative role, overseeing the</p> <p>23 regional presidents. At any one time, we would have 14,</p> <p>24 16, 17 regional presidents. They obviously can't all</p> <p>25 report, you know, directly to the CEO, nor should they.</p>
<p>Page 29</p> <p>1 Q. When did you become aware of that?</p> <p>2 A. When it was filed.</p> <p>3 Q. Have you reviewed the counterclaim?</p> <p>4 A. I did at the time it was filed. It's been</p> <p>5 some time since I've seen that claim.</p> <p>6 Q. And did you believe the allegations to be</p> <p>7 accurate that were set forth in the counterclaim?</p> <p>8 A. Absolutely.</p> <p>9 (Exhibit 2 is marked for identification.)</p> <p>10 BY MR. SABA:</p> <p>11 Q. Mr. Carmichael, you've been handed what's been</p> <p>12 marked as Exhibit Number 2. Are you able to identify</p> <p>13 this document for me?</p> <p>14 A. It looks like the counterclaim you were just</p> <p>15 referring to.</p> <p>16 Q. It would also include Fifth Third's answer to</p> <p>17 the amended complaint filed by Philip McHugh, but you're</p> <p>18 referring to the second half as the counterclaim?</p> <p>19 A. Right. Yes. I see that.</p> <p>20 Q. If I can refer you to page 20. Let me first</p> <p>21 ask, you said you reviewed the counterclaim. Did you</p> <p>22 review it for accuracy?</p> <p>23 MR. CIOFFI: Objection. Can you clarify the</p> <p>24 question? He's not a lawyer, so -- I'm assuming</p> <p>25 factual accuracy?</p>	<p>Page 31</p> <p>1 So it was more of an administrative role, providing</p> <p>2 oversight for the regions, responsible for making sure</p> <p>3 there was coaching in place, performance reviews,</p> <p>4 lessons learned from one region to the other.</p> <p>5 That was the way we used that --</p> <p>6 that position. Helping the organization in the region</p> <p>7 prepare for a potential ops review, where we go in and</p> <p>8 we sit down, we spend time with the region.</p> <p>9 This individual would kind of be an oversight</p> <p>10 role, administrative role position. That's what the</p> <p>11 regional job was. Once again, five different people</p> <p>12 have had that role in ten years. I use that as a</p> <p>13 rotational development position for -- for individuals</p> <p>14 on my team.</p> <p>15 Q. And the regions that would have reported to</p> <p>16 Phil McHugh at that time, that would have included the</p> <p>17 Cincinnati region as well; is that correct?</p> <p>18 A. At that time, yes.</p> <p>19 Q. If I can refer you to paragraph 6. It</p> <p>20 indicates plaintiff's combined 2020 compensation package</p> <p>21 in his role as head of regional banking, a total of</p> <p>22 2,050,352. Is that correct?</p> <p>23 A. I couldn't answer that. I mean, if that's</p> <p>24 what it says here and that's what we put in here, I</p> <p>25 believe that would be correct. But we wouldn't put</p>

<p>1 misinformation there, so I assume that that's what he 2 made, if we typed it in this document. 3 Q. What -- where would that information have come 4 from? 5 A. It would have come from our compensation 6 department. They report of our human capital position. 7 Q. And that's a -- that's a compensation figure. 8 You provide that indication to him at an annual review; 9 is that correct? 10 A. I sit down in February; I go through his 11 rewards against -- for performance against the prior 12 year, how our long-term equity performed. I give him 13 the awards for the prior year and his compensation 14 numbers. Then any changes in his go forward 15 compensation would also be communicated and reflected at 16 that time in the document. 17 Q. In paragraph 7, you indicate, in late 2018, 18 Fifth Third Bank president chief executive officer and 19 chairman of board of directors, Gregory Carmichael, 20 approached plaintiff and offered him the position of 21 president of one of Fifth Third's largest regions. Is 22 that correct? 23 A. That is correct. 24 Q. Okay. And the region that you're referring to 25 there, that you offered to Phil McHugh, was the</p>	<p>Page 32</p> <p>1 would not have had that conversation -- this is 2 correct. I had that conversation with Phil McHugh 3 about taking over the president and CEO of the 4 Cincinnati region, our largest region, our flagship 5 company. I don't believe the region was -- that 6 Cincinnati region was probably in the regional 7 structure yet. We had it separate. I just can't 8 be positive of that, but I'm pretty sure it's 9 correct. I offered that to Phil because Phil 10 acknowledged to me many times that Cincinnati's 11 home; this is where he wants to be. It's a very 12 different region than the other regions. It's our 13 largest region. It's our flagship. It's viewed 14 very differently. That's why it was independent of 15 the other regions for many -- most of my career, it 16 was independent of the other regions. And we had 17 it as an enterprise position. 18 So when Bob would have had that, when another 19 individual would have had that, like Michael, it 20 was not part of the regional structure. It was 21 held on its own because of the importance of that 22 market and that region. So at that time, when I 23 mentioned that to Phil, I don't believe it was 24 necessarily reporting into the regions at that 25 time, as I think through it.</p> <p>Page 34</p>
<p>1 Cincinnati region; is that correct? 2 A. That is correct. 3 Q. And you already indicated, at that time, the 4 Cincinnati region was already reporting to Phil McHugh; 5 is that correct? 6 A. I want to go back. I need to verify, because 7 at -- that Cincinnati position was in and out -- was -- 8 was -- may not have been in the region at that time. 9 I'm not positive. Thinking back, that may not have been 10 in there at the time; I really don't know. I'm not sure 11 if it was in there yet or we put it in afterwards. I'm 12 not -- I'm not positive of that. 13 Q. However, if that region was already reporting 14 to Phil McHugh, that would have been a demotion to go 15 down to heading a region that was already reporting to 16 him; isn't that right? 17 MR. CIOFFI: Objection. Calls for 18 speculation. And, Counsel, how are you defining 19 demotion? 20 MR. SABA: Go ahead. You can answer. 21 MR. CIOFFI: If -- if you can, without 22 speculating. 23 THE WITNESS: I'm not going to speculate. I'm 24 trying to remember the timeframe we're talking 25 about here. That region, I don't believe -- I</p>	<p>Page 33</p> <p>1 Regardless, it was a region, it was a great 2 opportunity, and I knew he wanted the opportunity 3 to be responsible in the community and have that 4 opportunity to lead an entity like the Cincinnati 5 region in the community, as part of the community. 6 Q. In paragraph 7, it references, in late 2018. 7 What is meant by "late 2018"? 8 A. Well, I'd think it would be the second half of 9 the year. 10 Q. Are you able to be more exact than the second 11 half of the year? 12 A. Without going back, I don't know. Late -- 13 late 2018. I mean, can't be more exact than that. 14 Q. How was that offer made to Phil McHugh; was 15 that made in writing? 16 A. No, I sat down. I was in Phil's office. I 17 asked him if he'd be interested in leading the regions. 18 As I go back and think about that conversation that you 19 brought forth, it was an enterprise role at that time. 20 Cincinnati was an enterprise role at that time, so 21 therefore, it wasn't reporting into the regions. I 22 asked him if he wanted to take over that region. He 23 quickly informed me that he was not interested in it 24 because he was only planning on working five more years. 25 And he thought someone that would take over the region</p> <p>Page 35</p>

<p>1 needed to be work -- work more than five years. It 2 wouldn't be fair to the region. 3 I then asked Bob Shaffer to approach Phil 4 McHugh and ask him if he would reconsider that 5 opportunity, and he told Bob Shaffer, as Bob 6 communicated back to me, that he only wanted to work 7 five more years and that he was not going to take that 8 job. 9 Q. Didn't Phil actually tell you he was not 10 connected in the Cinci market enough to be successful 11 there? 12 A. No, he didn't. That was not what he said at 13 all. 14 Q. That's not what he said to you? 15 A. That's not what he said at all. 16 (Exhibit 3 is marked for identification.) 17 BY MR. SABA: 18 Q. Mr. Carmichael, I've handed you what's been 19 marked as Exhibit Number 3. And for point of reference, 20 as we proceed in the deposition, this has a Bates stamp 21 number, which is that number you see in the bottom 22 left-hand corner. Fifth Third McHugh 0213064. Do you 23 see that? 24 A. On the bottom, which -- 25 Q. Left-hand corner.</p>	<p>Page 36</p> <p>1 A. 2009, yes, I see that. 2 Q. And Mr. Shaffer says to you, I forgot to ask 3 you today, have you had a chance to talk to Phil and 4 find out why he doesn't want to be the Cinci RP? Do you 5 see that? 6 A. I do. 7 Q. And RP would stand for regional president; is 8 that right? 9 A. That's correct. 10 Q. Okay. That's the position we've just been 11 talking about; isn't that right? 12 A. Yes. 13 Q. And could you read what your response was? 14 A. Yes, I doesn't {sic} feel he is connected 15 enough in the Cincinnati market to be successful. 16 Q. And there's a typo in there, correct, in terms 17 of how you typed that; is that right? 18 A. Appears so. 19 Q. So the indication you gave to Mr. Shaffer at 20 that time was that Phil did not feel connected enough in 21 the Cinci market to be successful; isn't that right? 22 A. That's what this text says. 23 Q. Okay. There's no mention of, oh, he's going 24 to retire in five years or he only wanted to stay five 25 years; isn't that right?</p> <p>Page 38</p>
<p>1 A. Yes, I see it. Yes. Okay. 2 Q. So for future reference, we'll be referring to 3 Bate stamp numbers. That's what that is. 4 A. Okay. 5 Q. Mr. Carmichael, this was produced as a text 6 message exchange between yourself and Mr. Shaffer. Do 7 you recognize your phone number there of 513-765-9166? 8 A. That's correct. 9 Q. Okay. And do you recognize that 513-470-8400 10 is Mr. Shaffer's cell phone number? 11 A. I don't recall what Bob Shaffer's cell phone 12 number is offhand. I just have him in my phone as Bob 13 Shaffer, so I -- 14 Q. You don't dispute, as I represent to you, that 15 that's Mr. Shaffer's cell phone number; is that right? 16 A. I'm not sure if it is or isn't. 17 Q. Okay. And this text message exchange, I'm 18 going to refer you specifically to the July 2, 2018, 19 text, at 8:09 p.m. from Mr. Shaffer to you. Do you see 20 that? Are you able to see where that is? 21 A. I got my glasses on now, so which text 22 exact -- 23 Q. I'm referring specifically to the one on 24 July 2, 2018, on 8:09 p.m. That would be 2009 military 25 time. Do you see that?</p> <p>Page 37</p>	<p>1 A. Not in this text, there's not. But that's 2 what he told me. 3 Q. All right. Is there any written documentation 4 that would indicate to the contrary of this text that 5 you sent to Mr. Shaffer, that Mr. McHugh somehow 6 indicated that I will only stay with the company five 7 more years? 8 MR. CIOFFI: Objection to the form of the 9 question. Mischaracterizes the e-mail in the use 10 of the word contradiction. You may answer. 11 THE WITNESS: Phil McHugh told me he wasn't 12 going to take the position because he felt 13 that that role needed to have someone that wanted 14 to work more than five years. That's what he told 15 me. Did he mention the word "connected"? 16 Obviously he did because I put it in this text, but 17 he told me he did not want to take that position 18 because he did not want to work five more years. 19 We have regional presidents that step into new 20 regions and build connectivity over years, all 21 right? The fact that he only wanted to work five 22 more years, maybe he felt he couldn't build that 23 connection in five years because he only wanted to 24 work five years. He knew -- he felt the market 25 needed someone in that position more than five</p> <p>Page 39</p>

<p>1 years. And he was clear that he did not want to 2 work more than five years when I offered him that 3 position, and if the word connectivity -- which he 4 obviously did -- to the marketplace, because he 5 didn't feel he could establish that connectivity in 6 that period of time, he wasn't going to be 7 connected to the market. That's all I can 8 reference from this conversation.</p> <p>9 But the glowing thing, and the most important 10 thing was -- is he was only going to work five more 11 years, that's what he told me. And he didn't think 12 he could build the relationships, and the market 13 needed somebody who's going to work five more years 14 to build those relationships.</p> <p>15 BY MR. SABA:</p> <p>16 Q. Didn't Phil McHugh actually indicate to you 17 that he did -- that it would take five to seven years to 18 be successful in that position, and he didn't want to 19 work in that position for five to seven years?</p> <p>20 A. No. He thought -- he knew it was going to 21 take time to build the relationships to connectivity, 22 but he was only going to work five more years. He never 23 ever said work in that position for five years. He only 24 wanted to work five more years.</p> <p>25 Q. And do you have any notes from that meeting?</p>	Page 40	<p>1 Mr. McHugh; isn't that right?</p> <p>2 A. I think, as I looked at the consistency 3 necessary going forward, for the regions, and with Phil 4 stepping into that role, we did bring the Cincinnati 5 region under the regional president at that time.</p> <p>6 I had to go back and look exactly what the 7 timeframe was when I moved the Cincinnati region into 8 the regional -- rest of the regional structure, because 9 it was a very different region, thought out very 10 differently and viewed very differently. That's why it 11 was on enterprise. So from a timeframe perspective, at 12 some point, that region reported into the region 13 structure and to Phil McHugh.</p> <p>14 Q. Okay. After this point in time; is that 15 correct?</p> <p>16 A. I believe that to be the case, yes.</p> <p>17 Q. Do you recall that occurring in August of 18 2018?</p> <p>19 A. I do not recall exactly when it occurred.</p> <p>20 Q. Okay. You wouldn't dispute that that occurred 21 in August 2018?</p> <p>22 A. I don't know. I don't -- I don't have -- I 23 don't have that -- that information in front of me, to 24 go back and look exactly when that move was made. It 25 could have happened at that point; I'm just not sure.</p>
<p>1 A. No, I don't.</p> <p>2 Q. You didn't make any written record of 3 that meeting?</p> <p>4 A. No. I stepped in his office and asked him if 5 he'd be interested to step into that role. Now as I go 6 through my recollection, that was not reporting to the 7 regions at the time; it was an enterprise position. He 8 was not on enterprise. So it was an opportunity to step 9 onto the enterprise. That's what assistant in that 10 region always reported into, was on the enterprise 11 committee. The regional head of all the regions did 12 not, because it was more administrative role. We viewed 13 Cincinnati very differently, all right?</p> <p>14 And I asked him if he wanted to step into that 15 role, which would put him on enterprise, and he said he 16 only wanted to work five more years, and he did 17 reference his ability to establish himself in the 18 marketplace, build those relationships, and that wasn't 19 going to be fair to the market since he was only going 20 to work five more years.</p> <p>21 Q. But you made no reference to that to 22 Mr. Shaffer; is that right?</p> <p>23 A. Not in this text message, I didn't.</p> <p>24 Q. In fact, instead, what you do is, you actually 25 have the Cincinnati region ultimately report to</p>	Page 41	<p>1 Q. Referring back to the second exhibit, in 2 paragraph 8, if you could go back to page 21.</p> <p>3 A. Okay.</p> <p>4 Q. Paragraph reads, shortly thereafter, Fifth 5 Third chief human resources officer Bob Shaffer and 6 another Fifth Third executive each had a conversation 7 with plaintiff about the position of president of one of 8 Fifth Third's largest regions.</p> <p>9 Who is the -- another "Fifth Third executive" 10 that's referenced there?</p> <p>11 A. I believe that individual is Mike Michael.</p> <p>12 Q. When did these conversations occur between 13 Phil McHugh and Bob Shaffer and Mike Michael?</p> <p>14 A. It would have been very shortly after the 15 timeframe in which I had a conversation with Phil about 16 the opportunity to be the CEO of the Cincinnati market.</p> <p>17 Q. And what was Mike Michael's role with Fifth 18 Third at that time?</p> <p>19 A. I got to go back in time to think. Mike 20 Michael, at one point, was the Cincinnati regional 21 president. Then I think we elevated him -- we did 22 elevate him to the chairman of the Cincinnati market to 23 keep connectivity with Mike. Great, great leader for 24 us, very well connected in the marketplace.</p> <p>25 So I believe, at the time, that he would have</p>

<p>1 been the -- chairman of the Cincinnati market was his 2 title. Not working full-time, still with the bank, 3 providing oversight to -- to the CEO and president of 4 the Cincinnati market. Once again, Mike had deep roots 5 and -- and -- and connectivity in the Cincinnati region. 6 We thought there was tremendous value in retaining his 7 services as part of the Fifth Third Bank. So I believe 8 that's Mike Michael.</p> <p>9 Q. Have you had any discussions with Mike Michael 10 about this 2018 conversation with Phil McHugh?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. Why would you know that that is Mike Michael 13 then?</p> <p>14 A. Because that would have been the only other 15 executive in his capacity -- restate the question?</p> <p>16 Because I asked Mike to go speak with -- with 17 Phil. You said after -- what timeframe are you talking 18 about when you "say afterwards"? Just so I'm clear 19 about when you say --</p> <p>20 MR. CIOFFI: Counsel, please repeat the 21 question so there's no --</p> <p>22 BY MR. SABA:</p> <p>23 Q. At -- at any time did you have a 24 conversation -- discussion with Mike Michael about his 25 conversation with Phil McHugh?</p>	<p>Page 44</p> <p>1 A. I do. 2 Q. Where did that information come from? 3 A. It came from my conversation with -- with 4 Phil, subsequent conversation that Bob Shaffer had with 5 Phil, and my ask of -- of Mike Michael, as executive -- 6 or as the chair of the region, to speak with Phil. 7 Q. When was Bob Shaffer's conversation with Phil? 8 A. It would have been sometime after I first 9 spoke with Phil. Shortly thereafter. 10 Q. Was this after your text message exchange with 11 Bob Shaffer? 12 A. Repeat the question, please? 13 Q. Yes. I asked, when was Bob Shaffer's 14 conversation with Phil McHugh, and you said it was after 15 your conversation with Phil McHugh, and I asked, was it 16 after -- was Bob Shaffer's conversation with Phil McHugh 17 after your text message exchange with Bob Shaffer? 18 A. I'm not sure. I'm not sure when -- when -- 19 the text went versus when he had the conversation with 20 Phil; I don't know. 21 Q. Were you present for the conversations between 22 Phil McHugh and Bob Shaffer and/or Mike Michael? 23 A. I was not present. 24 Q. Where does your understanding of what happened 25 during those conversations come from?</p>
<p>Page 45</p> <p>1 A. I did, shortly after he had the conversation 2 with Phil.</p> <p>3 Q. Do you have any notes of that meeting with 4 Mike Michael?</p> <p>5 A. I do not.</p> <p>6 Q. Did Mike Michael take any notes of that 7 meeting?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Other than your text message exchange with 10 Mr. Shaffer, do you have any other communications with 11 Mr. Shaffer and Mr. Michael regarding Phil McHugh 12 declining the Cincinnati regional president position?</p> <p>13 A. I don't believe so.</p> <p>14 Q. The allegations in -- in paragraph 9 of the 15 counterclaim. At that time, plaintiff told each 16 executive separately that he would not accept the 17 position of president of one of Fifth Third's largest 18 regions because it was his intention to work only for 19 the next five years before he would enter retirement. 20 He stated that he did not feel it would be fair to Fifth 21 Third because success in that position would take longer 22 than five years. The need for continuity warranted the 23 installation of someone who would remain with the Fifth 24 Third Bank for longer than five years. 25 Do you see that?</p>	<p>Page 47</p> <p>1 MR. CIOFFI: Objection. Asked and answered. 2 He testified that they told him. 3 THE WITNESS: That's correct. Bob came back 4 to me afterwards, reiterated what Phil told me. I 5 asked Mike to also approach him to see if he might 6 reconsider. Mike shared with me the conversation, 7 that he only wanted to work five more years and 8 didn't think he could build the connectivity 9 relationships in the marketplace. 10 BY MR. SABA: 11 Q. And with respect to that conversation with 12 Mr. Shaffer, did you make any notes of that 13 conversation? 14 A. I did not. 15 Q. Is -- is that recorded anywhere, the comments 16 made by Mr. Shaffer or what Mr. McHugh allegedly said to 17 Mr. Shaffer? 18 A. I did not take any notes or make any -- any 19 comments anywhere with -- in those conversations. So I 20 do not have any recollection of making any notes or 21 taking any notes on that conversation. 22 Q. Do you know if Mr. Shaffer has any notes from 23 that? 24 MR. CIOFFI: Objection. Asked and answered. 25 THE WITNESS: I'm not aware of any.</p>

<p>Page 48</p> <p>1 BY MR. SABA:</p> <p>2 Q. Are you representing today that, during your</p> <p>3 conversation with Phil McHugh, he specifically indicated</p> <p>4 that he would be entering retirement?</p> <p>5 A. He never used the word "retirement." He told</p> <p>6 me he only wanted to work five more years.</p> <p>7 Q. Referring you to paragraph 10, following many</p> <p>8 months of succession planning in 2020, Tim Spence, an</p> <p>9 experienced high ranking executive at Fifth Third Bank,</p> <p>10 was vetted for the position of president at Fifth Third</p> <p>11 Bank. Mr. Spence is in the same protected age</p> <p>12 classification of over 40. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. And with respect to the "many months of</p> <p>15 succession planning," what is that referring to?</p> <p>16 A. Well, succession planning is a process that</p> <p>17 goes over an extended period of time. We do that, we --</p> <p>18 we exercise that process every single year in December,</p> <p>19 as I referenced earlier in my testimony. So at the end</p> <p>20 of the day, it's a process. We go through it each year</p> <p>21 with the board. There's development plans around</p> <p>22 potential individuals in the organization with respect</p> <p>23 to succession planning. So that's what that's referring</p> <p>24 to.</p> <p>25 Q. And it indicates that Mr. Spence was "vetted</p>	<p>Page 50</p> <p>1 did not conceal this vetting activity. So the bank was</p> <p>2 not concealing that the board would decide who would be</p> <p>3 the next president. Is that what that means?</p> <p>4 MR. CIOFFI: Objection. The paragraph, the</p> <p>5 words speak for themselves. But if you have</p> <p>6 something to add, you can add something.</p> <p>7 THE WITNESS: No. It's part of the vetting</p> <p>8 process; it's coming out of the talent management.</p> <p>9 For the vetting process for Tim Spence would have</p> <p>10 been an independent assessment as requested by the</p> <p>11 board. Marsha Williams called me after the talent</p> <p>12 management discussion in December and asked me to</p> <p>13 have RHR engage. That was their decision; that was</p> <p>14 their selection. It was the same individual and</p> <p>15 organization used when I became -- was vetted for</p> <p>16 the -- for the CEO position. So part of the</p> <p>17 board's vetting process also included independent</p> <p>18 assessment of Tim Spence by RHR.</p> <p>19 BY MR. SABA:</p> <p>20 Q. And was that independent assessment a</p> <p>21 necessary part of Tim Spence being vetted for the</p> <p>22 position of president with Fifth Third Bank?</p> <p>23 A. It was the board's decision and it was the</p> <p>24 board's request to validate their beliefs and -- and</p> <p>25 their understanding of who they believe was the best</p>
<p>Page 49</p> <p>1 for the position of president." What does that mean, he</p> <p>2 was "vetted"?</p> <p>3 A. Part of our talent management process and</p> <p>4 succession planning process. Those discussions were</p> <p>5 held by the board. The board vets that; it's the</p> <p>6 board's decision. It's the board's opportunity to go</p> <p>7 through the succession planning process as structured</p> <p>8 and as required by the regulators, as required by the --</p> <p>9 by the Glass Lewis and -- and other oversight entities.</p> <p>10 They review that process. They vet the process.</p> <p>11 Q. And that's all that's referring -- that's all</p> <p>12 that's referring to with respect to the vetting; it's</p> <p>13 the board's decision to appoint Mr. Spence, or is that</p> <p>14 referring to anything else as vetting for the position</p> <p>15 of president?</p> <p>16 A. The board is the only one that makes that</p> <p>17 decision. It's a board process. The board elects the</p> <p>18 president; the board elects the CEO. That's their job.</p> <p>19 So any vetting that was done is with respect of the</p> <p>20 talent management process, assess management process</p> <p>21 that was done in December; it was the board.</p> <p>22 Q. And you were the chairman of the board at that</p> <p>23 time; is that right?</p> <p>24 A. I was.</p> <p>25 Q. So referring to the next paragraph, the bank</p>	<p>Page 51</p> <p>1 qualified person to -- to be put in the position of</p> <p>2 president, CEO. That's their decision. They asked to</p> <p>3 have further validation by bringing in a third party</p> <p>4 that's recognized as an industry leader, expert, and has</p> <p>5 done this for hundreds of companies. It's one they were</p> <p>6 comfortable with because they'd used them prior.</p> <p>7 I did not request they bring in RHR. They</p> <p>8 requested that. And Bob Shaffer facilitated that</p> <p>9 process. So when you think of vetting here, that was</p> <p>10 part of the board's vetting of Tim Spence.</p> <p>11 Q. And my question was, is that vetting of Tim</p> <p>12 Spence by RHR, this independent third party, was that a</p> <p>13 necessary part of Tim Spence being appointed president</p> <p>14 of Fifth Third Bank?</p> <p>15 MR. CIOFFI: Objection to the form of the</p> <p>16 question, Counsel. He answered the question. Do</p> <p>17 you have a particular definition of "necessary"?</p> <p>18 BY MR. SABA:</p> <p>19 Q. I meant, do you understand what the word</p> <p>20 "necessary" means?</p> <p>21 A. Yes, I'm very well of what the word necessary</p> <p>22 means.</p> <p>23 Q. Okay. Thank you.</p> <p>24 My question --</p> <p>25 MR. CIOFFI: But do you know what it means in</p>

<p>1 the context of his question?</p> <p>2 MR. SABA: Thank you. It's my deposition, not</p> <p>3 your deposition. You can ask him questions,</p> <p>4 Michael. The issue is -- he indicated he</p> <p>5 understands --</p> <p>6 MR. CIOFFI: You've asked the question three</p> <p>7 times --</p> <p>8 MR. SABA: It's not if you understand.</p> <p>9 MR. CIOFFI: Emphasizing the word necessary.</p> <p>10 MR. SABA: No, I haven't.</p> <p>11 MR. CIOFFI: You have. You're using it as a</p> <p>12 term of art. That's the point of the objection.</p> <p>13 MR. SABA: No, I'm not. I asked if he</p> <p>14 understands. He understands. Whether or not you</p> <p>15 want to interrupt and put your own answer in is</p> <p>16 not -- it's not appropriate.</p> <p>17 MR. CIOFFI: The objection is our only way to</p> <p>18 have a clear record. If you can answer the</p> <p>19 question, answer the question.</p> <p>20 THE WITNESS: Let me -- let me try and answer</p> <p>21 the question, what I think you're referring.</p> <p>22 The board's not required to have an</p> <p>23 independent third-party assessment. The board</p> <p>24 elected and they felt that -- that as a good part</p> <p>25 of their due diligence in assessing talent that</p>	<p>Page 52</p> <p>1 MR. CIOFFI: Yeah, objection to the form of</p> <p>2 the question. Calls for speculation.</p> <p>3 THE WITNESS: I won't speculate. I can't</p> <p>4 answer. This is a board process. They take it</p> <p>5 very seriously. We have a lot of very successful</p> <p>6 board members who take this job very seriously.</p> <p>7 They're independent. I don't rubber stamp</p> <p>8 anything. This was not my recommendation. This</p> <p>9 was the board's decision. The board wanted RHR. I</p> <p>10 have no clue whether they felt that that was a</p> <p>11 mandated requirement, that they had to do it. They</p> <p>12 did it. It was a request.</p> <p>13 BY MR. SABA:</p> <p>14 Q. Referring back to paragraph 11, the first</p> <p>15 sentence reads, the bank did not conceal this vetting</p> <p>16 activity, which was widely known across the bank. What</p> <p>17 does that mean, it was "widely known across the bank"?</p> <p>18 A. Once again, this was written some time ago,</p> <p>19 but what I believe that -- widely known across the bank,</p> <p>20 is that when they brought in RHR as part of the vetting</p> <p>21 process with Tim Spence, right, that process involved</p> <p>22 peers being interviewed by RHR, Guy in particular,</p> <p>23 Odyne. It also involved subordinates, reports of Tim</p> <p>24 Spence, being interviewed as part of the process. It</p> <p>25 involved a lot of things, reaffirming the CEO profile,</p>
<p>1 would be the next CEO of the company, you get a</p> <p>2 third-party opinion, understand how that</p> <p>3 individual, against their database of other CEOs</p> <p>4 would stack up, and Tim stacked up exceptionally</p> <p>5 well top core down. All right?</p> <p>6 They wanted that confirmation. They felt that</p> <p>7 they would like to have that confirmation and</p> <p>8 validation. That was their decision. Whether it</p> <p>9 was necessary or not, they obviously wanted to do</p> <p>10 it. Whether they thought that was necessary or</p> <p>11 not, that was the board's decision. I wasn't in</p> <p>12 that conversation.</p> <p>13 BY MR. SABA:</p> <p>14 Q. You were a member of the board at that time,</p> <p>15 correct?</p> <p>16 A. I was a member of the board, but not -- when</p> <p>17 the board has an executive session, I step out. So I am</p> <p>18 not in an executive session of independent directors</p> <p>19 where those conversations could happen.</p> <p>20 Q. With respect to -- let me -- let me ask you</p> <p>21 this a different way.</p> <p>22 Was -- was Tim Spence going to be made</p> <p>23 president of Fifth Third Bank without being vetted by</p> <p>24 RHR?</p> <p>25 A. I can't answer that.</p>	<p>Page 53</p> <p>1 the winning formula.</p> <p>2 So that was known, and I think they brought in</p> <p>3 quite a few of his peers and quite a few of his direct</p> <p>4 reports. So when it says it was known, it was also</p> <p>5 known to Phil McHugh that Tim was being put through the</p> <p>6 vetting process. Phil McHugh was part of the vetting</p> <p>7 process. Phil McHugh didn't have any objections. When</p> <p>8 you look at the feedback that was -- that was --</p> <p>9 that was put together by RHR from his peers and his</p> <p>10 subordinates, Tim got very high marks, all right? There</p> <p>11 was no one stepping up and saying this person was not</p> <p>12 the right individual to become the CEO or president of</p> <p>13 the company.</p> <p>14 So when I say it was known, there was many</p> <p>15 people involved in this vetting process of Tim for the</p> <p>16 next president of Fifth Third Bank.</p> <p>17 Q. All right. Did you have any conversations</p> <p>18 with Phil McHugh about him being involved in the vetting</p> <p>19 process by RHR of Tim Spence for president of Fifth</p> <p>20 Third Bank?</p> <p>21 A. I believe that I spoke with each one of Tim's</p> <p>22 peers to let them know that they would be involved in</p> <p>23 this process. It would have been irresponsible of me</p> <p>24 not to communicate to them that this process was going</p> <p>25 to take place and that they would be involved in this</p>
<p>Page 54</p>	<p>Page 55</p>

<p>1 process. I would not want them surprised by someone 2 from the outside reaching in to them and out to them and 3 asking them for information on a peer of theirs without 4 understanding the process. 5 So as I would always do, I would absolutely 6 have talked to each of these individuals that was a peer 7 of Tim Spence and informed them of the process and what 8 was going to take place. 9 Q. When did you have this conversation with Phil 10 McHugh? 11 A. I can't answer that question. I don't have 12 the -- I don't have that in front of me. 13 Q. What do you recall about the conversation you 14 had with Phil McHugh, about RHR vetting Tim Spence? 15 A. I don't -- I don't really recall the 16 conversation with respect to -- I just let them know it 17 was going to -- it was going to transpire. I don't 18 recall Phil reacting -- Phil McHugh reacting to that, 19 those statements. He never said -- he definitely never 20 said why am I not being vetted? Why am I not being 21 considered for the president because you've -- you've 22 promised me in some way that I would be that? Never a 23 conversation of that nature. 24 I would have informed him it was going to 25 happen, and I think he acknowledged that. He didn't</p>	<p>Page 56</p> <p>1 going to want an interview. That's the only 2 conversation I had. 3 BY MR. SABA: 4 Q. And that conversation, was that documented 5 anywhere in writing? 6 A. I did not document every one of these 7 conversations with every one of his peers or 8 subordinates if I talked to them. I just informed them 9 that was going to happen. I did not write anything 10 down. 11 Q. Did you indicate to any of these individuals 12 that Tim is -- the timing for when Tim would be 13 succeeding you as president and CEO? 14 A. It's not my decision. That's the board's 15 decision. I would never ever talk about the timing of a 16 decision of that nature when it's not my decision. It's 17 the board's decision. 18 I'm going back; RHR would have required me, by 19 the way, in conversations with Guy, to make sure 20 that these individuals were going to be informed that 21 they were going to be getting a phone call from his 22 organization. 23 So that is what -- also, as I remember back, I 24 would have did it anyway, but he reminded me it has to 25 be done before he makes a call in to them so they're not</p> <p>Page 58</p>
<p>1 come back and ask me or why this or why that? He said 2 he would -- he would talk to him when he call him. 3 That's what I remember. 4 Q. Do you recall anything specifically that was 5 said during that conversation? 6 MR. CIOFFI: Objection. He just answered the 7 question. 8 MR. SABA: He told me what wasn't said. I'm 9 trying to -- I'm trying to have you tell me what 10 specifically was said. 11 THE WITNESS: I cannot recall anything Phil 12 said except where he would be prepared to take the 13 conversation and participate. I'm not aware of 14 anything more than that, and I cannot recall 15 anything more than that about that conversation. 16 BY MR. SABA: 17 Q. Can you recall anything you specifically said? 18 MR. CIOFFI: Objection. He answered the 19 question. 20 THE WITNESS: I just informed him that this 21 process was going to take place, that Tim was being 22 assessed by a third party for potential president 23 of CEO -- of Fifth Third Bank, and that they would 24 be part of that vetting process. And you would -- 25 so expect a call from this individual and he's</p> <p>Page 57</p>	<p>1 surprised, so. 2 Q. So with respect to these conversations you had 3 with these individuals, you wouldn't have necessarily 4 indicated any timing of when Tim Spence would become 5 president and/or CEO -- 6 MR. CIOFFI: Objection. Asked and answered. 7 Counsel, you -- you keep repeating questions, and 8 I'll remind you of the court's order. You're only 9 permitted to go a second day if the questions 10 aren't redundant. This is sort of the third time 11 you've asked him that question. 12 MR. SABA: They're not redundant questions. 13 MR. CIOFFI: He can answer. 14 It is a redundant question. The record will 15 speak for itself. I mean, it's not the only 16 redundant question in the first hour. 17 MR. SABA: Michael -- 18 MR. CIOFFI: Could you repeat the question, 19 please? 20 (The record was read.) 21 MR. CIOFFI: Objection. Asked and answered. 22 Twice already. But you may answer it again. 23 THE WITNESS: I would never provide timing to 24 anybody when I don't know the timing myself. 25 And this is a decision the board makes. And</p> <p>Page 59</p>

<p>Page 60</p> <p>1 obviously, the vetting process is the vetting</p> <p>2 process, and the board makes decisions based on the</p> <p>3 outcomes of those processes.</p> <p>4 BY MR. SABA:</p> <p>5 Q. During this conversation you had with Phil</p> <p>6 McHugh about the vetting process, did you specifically</p> <p>7 indicate to him that he was not being considered for</p> <p>8 president and/or CEO?</p> <p>9 A. I would never have that conversation about him</p> <p>10 not being vetted for CEO or president because he was</p> <p>11 never considered. He knows he was never considered, all</p> <p>12 right? That's why he never responded back when I told</p> <p>13 him that RHR was coming in to assess Tim and vet Tim; he</p> <p>14 never once said why not me, because he was never being</p> <p>15 considered. He knew he wasn't being considered because</p> <p>16 he wasn't qualified. At no discussion ever with Phil</p> <p>17 McHugh did we ever talk about him being the permanent</p> <p>18 future leader of Fifth Third Bank as a CEO. We never</p> <p>19 had a conversation of that nature. Never happened.</p> <p>20 Q. Did you, during this conversation you had with</p> <p>21 Phil McHugh about Tim Spence being vetted by RHR -- did</p> <p>22 you indicate to Phil McHugh that you were not going to</p> <p>23 recommend him as president and CEO succeeding you?</p> <p>24 A. I never had a conversation about recommending</p> <p>25 him as president/CEO succeeding me. The only</p>	<p>Page 62</p> <p>1 Who is that referring to, "the same protected</p> <p>2 age classification" as whom?</p> <p>3 MR. CIOFFI: Objection. It calls for a legal</p> <p>4 conclusion. If you can answer.</p> <p>5 THE WITNESS: I would just be making -- I</p> <p>6 mean, I would assume we're talking about Phil</p> <p>7 McHugh here, same protected class. That's an</p> <p>8 assumption, but I don't -- I don't know why else it</p> <p>9 would be in there.</p> <p>10 BY MR. SABA:</p> <p>11 Q. What is your understanding of what constitutes</p> <p>12 age discrimination?</p> <p>13 MR. CIOFFI: Objection. Calls for a legal</p> <p>14 conclusion.</p> <p>15 BY MR. SABA:</p> <p>16 Q. I'm asking for your understanding. Go ahead.</p> <p>17 MR. CIOFFI: Well, his understanding is</p> <p>18 irrelevant, Counsel, and it's beyond the scope of</p> <p>19 discovery.</p> <p>20 MR. SABA: Go ahead.</p> <p>21 MR. CIOFFI: If you can answer.</p> <p>22 THE WITNESS: Discrimination of an action,</p> <p>23 someone that is, legally, I guess, above 40 years</p> <p>24 old, that you're -- you're doing and taking an</p> <p>25 action, based on their age, that's detrimental to</p>
<p>Page 61</p> <p>1 conversation that ever occurred with Phil McHugh was</p> <p>2 would he be interested, if something happened to me and</p> <p>3 I had to step out, would he be interested to be</p> <p>4 considered as an emergency successor if the board wanted</p> <p>5 him to step into that role? It's a board decision</p> <p>6 again. My job is to make sure that the individual would</p> <p>7 be willing to do that as an emergency successor. That's</p> <p>8 keeping the lights on, keeping the trains on the track,</p> <p>9 keeping things moving forward until the board completed</p> <p>10 their process. That was the only conversation, ever, I</p> <p>11 had with Phil McHugh about, quote, CEO job, and it was</p> <p>12 an emergency successor.</p> <p>13 MR. SABA: If we can go off the record.</p> <p>14 THE VIDEOGRAPHER: It's 10:56 a.m. We're</p> <p>15 going off the record.</p> <p>16 (A recess was taken from 10:56 to 11:14.)</p> <p>17 THE VIDEOGRAPHER: The time is 11:14 a.m.</p> <p>18 We're back on the record.</p> <p>19 BY MR. SABA:</p> <p>20 Q. Mr. Carmichael, referring you back to</p> <p>21 Exhibit 2, paragraph number 10 of the counterclaim, and</p> <p>22 I'm on page 21.</p> <p>23 The last sentence of paragraph 10 reads,</p> <p>24 Mr. Spence is in the same protected age classification</p> <p>25 of over 40.</p>	<p>Page 63</p> <p>1 them, would be my understanding of age</p> <p>2 discrimination. You're making decisions based on</p> <p>3 age.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Did you believe that, because Tim Spence was</p> <p>6 over the age of 40, that you were free to make a</p> <p>7 decision based upon age with respect to Phil McHugh?</p> <p>8 MR. CIOFFI: Objection. Assumes facts not in</p> <p>9 evidence, and no decision was -- was based on age.</p> <p>10 That's what he just testified to. Could you repeat</p> <p>11 -- read the question back.</p> <p>12 MR. SABA: Re-read the question, then.</p> <p>13 (The record was read.)</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SABA:</p> <p>16 Q. Did you believe that, because Tim Spence was</p> <p>17 over the age of 40, that you were free to make a</p> <p>18 decision regarding Phil McHugh, based upon age?</p> <p>19 A. I don't ever make age a factor in any</p> <p>20 discussion on this topic. This is -- at the end of the</p> <p>21 day, it's based on qualifications. Phil was not</p> <p>22 qualified for the CEO, so he was never considered. It</p> <p>23 had nothing do with his age. He just wasn't qualified.</p> <p>24 I can give you all the examples of why he wasn't</p> <p>25 qualified. I'm sure you'll ask.</p>

<p>1 But at the end of the day, I don't make 2 decisions based on age, and we didn't do anything with 3 respect to succession planning because of Tim's age or 4 Phil's age. 5 Q. Is age included in a factor with respect to 6 CEO and president/CEO succession planning at Fifth Third 7 Bank? 8 A. I've never had a conversation with the board, 9 and the board's never asked me anything with respect to 10 someone's age. It's based on the merits of their 11 qualifications to elevate to higher levels in the 12 organization and potentially CEO. 13 Q. Do you believe it would be inappropriate for 14 the board to make a decision based upon the president or 15 CEO succession and use age as a factor? 16 MR. CIOFFI: Objection. Asked and answered. 17 He said it wasn't a factor. You can answer it 18 again, if you can. 19 THE WITNESS: Wasn't a factor. 20 BY MR. SABA: 21 Q. That wasn't my question. I didn't ask if it 22 was a factor. I'm asking if you believe it would be 23 inappropriate for the board to use age as a factor with 24 respect to succession planning of the president or CEO 25 at Fifth Third Bank.</p>	<p>Page 64</p> <p>1 question. There's nothing in testimony that says 2 he believed that. 3 THE WITNESS: It's the board's decision on who 4 becomes the CEO. My beliefs are irrelevant in this 5 case; it's the board's decision. And the board may 6 factor in, in their decision, the longevity of an 7 individual in that position, not based on age but 8 could be because the individual only wants to work 9 two or three more years. That might be a factor in 10 their decision to put someone in that role because 11 it takes time to put someone in that role; it takes 12 time for them to develop into that role. It takes 13 time to have the next successor brought forth in 14 that role. 15 So if that individual only wants to work three 16 or four more years, the board would consider 17 something like that, all right? But they wouldn't 18 consider age beyond that. That's really a 19 timeline, not an age thing. 20 BY MR. SABA: 21 Q. If you could turn to paragraph 13 of the 22 counterclaim, page 22. It reads, in addition, multiple 23 executives conferred with plaintiff that Mr. Spence was 24 being vetted for president/CEO succession purposes. At 25 no time did plaintiff object or state that he,</p> <p>Page 66</p>
<p>1 MR. CIOFFI: Objection. Completely redundant. 2 You asked if it was a factor, he said it wasn't a 3 factor. Now you're asking him again. 4 MR. SABA: I'm asking him. No, no, no. 5 That's not my question. You can answer whatever 6 question you want to in your own mind, Michael. 7 BY MR. SABA: 8 Q. My question is, is it inappropriate, in your 9 opinion, for the bank to use -- excuse me. 10 Is it inappropriate, in your opinion, for the 11 board to use age as a factor with respect to succession 12 planning of the president or CEO at Fifth Third Bank? 13 A. The board never used age as a factor. I never 14 had to reason to be concerned about that because it was 15 never brought up, never a factor. And I wouldn't expect 16 them to make it a factor. I understand it's about 17 qualifications, not about age, so would it be 18 inappropriate? Absolutely. But it was never discussed 19 because it was never brought forth. 20 Q. You did recognize that, with respect to CEO 21 and president succession planning at Fifth Third Bank, 22 that it was important to make sure that the candidate 23 had a long enough runway to be able to take on that 24 position; is that right? 25 MR. CIOFFI: Objection to the form of the</p> <p>Page 65</p>	<p>1 plaintiff, should be president or should be CEO. 2 Do you see that? 3 A. I do. 4 Q. Who are the "multiple executives"? 5 A. They would have been the other executives that 6 were part of the vetting process, would have been Tim 7 Spence's peers. 8 Q. Do you recall specifically who those multiple 9 executives were? 10 A. I know Tayfun Tuzun was one of those 11 individuals. I believe Lars Anderson was one of those 12 individuals. I believe Bob Shaffer may have been one of 13 those individuals. I'm speculating, but there is a list 14 of, I think, you know, six, seven individuals that were 15 considered peers that were vetted in this process. I 16 don't have that list in front of me. 17 Q. And when did these individuals confer with 18 Phil McHugh that Mr. Spence was being vetted for 19 president and CEO succession purposes? 20 A. It's my understanding that conversations 21 occurred that -- when Tim was going through the process, 22 my understanding, from an individual -- that an 23 individual was asked what the process was for. An 24 individual also had conversations with Phil and was 25 clear that it was -- they all understood that this was</p> <p>Page 67</p>

<p>Page 68</p> <p>1 about vetting Tim as a potential president.</p> <p>2 Once again, I made that clear to each of them,</p> <p>3 that this vetting process and this assessment was about</p> <p>4 Tim becoming president. So it wasn't a secret.</p> <p>5 Everyone understood what this was about that he was</p> <p>6 going to be vetted, and his peers knew he was being</p> <p>7 vetted for the president, including Phil McHugh, who, by</p> <p>8 the way, never came to me and said, why not me? What's</p> <p>9 going on? Why am I not being vetted?</p> <p>10 Once again, all the peers were communicated he</p> <p>11 was being vetted as the potential president. Did they</p> <p>12 talk among themselves? I believe they did; I heard</p> <p>13 that. I don't have that documented, but comments were</p> <p>14 made to me that we all knew what was going on.</p> <p>15 Q. Who made those comments to you?</p> <p>16 A. Jamie Leonard made those comments; Tayfun</p> <p>17 Tuzun would have made those comments to me.</p> <p>18 Q. When did Jamie Leonard and Tayfun Tuzun make</p> <p>19 these comments to you?</p> <p>20 A. Jamie's comment was made to me weeks after --</p> <p>21 weeks after -- a week or so after Phil left -- somewhere</p> <p>22 shortly thereafter when Phil walked out and quit.</p> <p>23 Q. Had a lawsuit already been filed?</p> <p>24 A. I don't know what the time exactly was, to be</p> <p>25 honest with you.</p>	<p>Page 70</p> <p>1 succession purposes. And you referred to Bob Shaffer,</p> <p>2 Lars Anderson, Tayfun Tuzun and Jamie Leonard.</p> <p>3 I asked you, when did these conversations</p> <p>4 occur; when did you become aware of them? You</p> <p>5 identified two conversations, one with Jamie Leonard and</p> <p>6 Tayfun Tuzun. I'm wondering if you can identify any</p> <p>7 other conversations with any other executives who</p> <p>8 indicated that Phil McHugh knew that Tim Spence was</p> <p>9 being vetted for president and CEO.</p> <p>10 MR. CIOFFI: Wait. By way of objection, that</p> <p>11 was a long question, which I couldn't follow.</p> <p>12 Could you just read the whole question back?</p> <p>13 (Record was read.)</p> <p>14 MR. CIOFFI: Objection to the form of the</p> <p>15 question because it's several questions. But if</p> <p>16 you can answer, you may. Go ahead.</p> <p>17 THE WITNESS: Obviously, Bob Shaffer was --</p> <p>18 was -- was having conversations. Once again,</p> <p>19 when -- when Phil quit the bank and refused to do</p> <p>20 the consumer job -- which is a top five job in the</p> <p>21 company, all right, which is substantially</p> <p>22 different than -- than -- than the position was</p> <p>23 prior -- it was never about him not becoming the</p> <p>24 president or CEO. All right? He walked out and</p> <p>25 said, I won't report to Tim Spence. I'm not going</p>
<p>Page 69</p> <p>1 Q. And what specifically did Jamie Leonard say?</p> <p>2 A. It was -- it was in conversation that, not</p> <p>3 sure what's going on. We all knew that -- that Tim was</p> <p>4 being vetted for the president. Not sure what the issue</p> <p>5 is here. Something to that extent. I didn't write it</p> <p>6 down. I don't know exactly verbatim. But indicating</p> <p>7 that they had -- that they were aware. Of course they</p> <p>8 were aware because they were -- they were told.</p> <p>9 Q. And what did Tayfun Tuzun say to you?</p> <p>10 A. When Phil refused to do the job and quit --</p> <p>11 and I'm not sure the exact timing of that -- Tayfun was</p> <p>12 in my office and said, hey, we all knew what was going</p> <p>13 on. This is the -- he knew what was going on. This is</p> <p>14 not a -- this is not a surprise. Everyone knew what was</p> <p>15 going on. We were all part of the process. Something</p> <p>16 to that extent. I don't -- I didn't record it; I didn't</p> <p>17 write it down.</p> <p>18 Q. Do you recall any other conversations with --</p> <p>19 do you recall any other conversations regarding what</p> <p>20 Phil McHugh knew with anyone other than Jamie Leonard or</p> <p>21 Tayfun Tuzun?</p> <p>22 A. Repeat the question, please?</p> <p>23 Q. Sure. You were identifying the multiple</p> <p>24 executives that you believe conferred with Mr. McHugh</p> <p>25 regarding Mr. Spence being vetted for president and CEO</p>	<p>Page 71</p> <p>1 to do the consumer job. I refuse it -- he refused</p> <p>2 to do the job he was offered; he refused to work</p> <p>3 for Tim Spence. All right?</p> <p>4 Had nothing ever to do about him should have</p> <p>5 been the CEO, could have been the CEO, or promised</p> <p>6 the CEO. That was an after the fact once the --</p> <p>7 and when the suit was filed, that was the first I</p> <p>8 became aware that he believed that. And at the end</p> <p>9 of the day, that was an afterthought. It was never</p> <p>10 ever part of any conversation.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Referring to paragraph 14, the counterclaim.</p> <p>13 It reads, at the bank's September 2020 board meeting,</p> <p>14 Fifth Third Bank's board of directors met with the</p> <p>15 executive development agency to discuss the vetting of</p> <p>16 Mr. Spence. Plaintiff was aware of this meeting.</p> <p>17 When the executive development agency meets</p> <p>18 with the board to discuss the vetting of Mr. Spence,</p> <p>19 who's present at that board meeting?</p> <p>20 A. Well, it would have been the board. It would</p> <p>21 have been the -- Bob Shaffer would have most likely been</p> <p>22 there. I can't remember exactly. Myself, I would have</p> <p>23 been there for that -- for that review. Good chance we</p> <p>24 would have had -- Susan Zaunbrecher potentially could</p> <p>25 have been there. Myself and Bob would have definitely</p>

<p>Page 72</p> <p>1 been there. I can't recall any other executive 2 non-board member that would have attended that session. 3 And obviously we have RHR. 4 Q. And Phil McHugh would not have been present 5 for that presentation, correct? 6 A. No, he would not have been present for that 7 presentation. 8 Q. Referring you down to paragraph 19, the 9 counterclaim. It indicates, significantly this 10 transition to head of consumer banking would have put 11 plaintiff in a proxy level position, which would have 12 resulted in the plaintiff becoming a named executive 13 officer in the bank's 2021 proxy statement at an annual 14 total income level well in excess of 2 million dollars. 15 Do you see that? 16 A. I do. 17 Q. Then referring to paragraph 20, beyond that, 18 if plaintiff continued as head of consumer banking, his 19 total income would not have diminished, and his total 20 annual compensation was continued at 2 million 250, 21 making one of the top five highest paid executives in 22 the company. 23 Do you see that? 24 A. I do. 25 Q. And those two paragraphs are accurate, right?</p>	<p>Page 74</p> <p>1 would have made adjustments to bring the consumer head 2 in that would have been in the proxy. All right? This 3 is a top five job in the company. I only have five of 4 these excellent top leadership roles that Phil was 5 qualified to step in and do. He refused to do that job. 6 His compensation wasn't diminished or taken down; it was 7 going up. All of his perks, he was going to keep, the 8 only executive with two country clubs that he was 9 maintaining that he had to have, okay? 10 Executive physical, execute weight -- none of 11 that changed. He was being given a raise. He was asked 12 to take one of the top five jobs in the company, refused 13 to do it, told me he wouldn't work for Tim Spence and 14 wouldn't take the role. 15 Q. This didn't indicate he was being given a 16 raise, correct? It indicates he's going to receive the 17 exact same compensation that he was otherwise receiving 18 in 2020; isn't that right? 19 A. I communicated with Phil that I was going to 20 add more to this number, right. That wasn't decided in 21 writing yet. I hadn't put that into the system yet. 22 This is probably what was in the system. But I was 23 going to add more money to this job because Phil's 24 always about money. Every time I've ever given him a 25 role, it was all about the hardship it was going to</p>
<p>Page 73</p> <p>1 A. If they're in here, they're accurate because I 2 reviewed it at the time, the point in time, so yes, I 3 believe they'd be accurate. 4 Q. So to be clear, Phil McHugh was already due to 5 make 2 million, 250 in 2020. So he was already going to 6 be part of the proxy statement; is that right? 7 A. Incorrect. This position of the consumer 8 bank, head of consumer bank, was going to be in the 9 proxy because it had over 50 percent of the gross 10 revenue, over 60 percent of the gross revenue in the 11 company. I was going to put the consumer head job -- 12 that was the job identifying the proxy because of the 13 scale of that job at this point. The regional job would 14 have never been in the proxy. It never has been in the 15 proxy. If you check today, it's not in the proxy, okay? 16 By design, it's more of an administrative 17 role. Okay? It's not a proxy position. I was going to 18 ensure that Phil was going to be in the proxy by adding 19 additional compensation beyond this, I believe, because 20 I wanted to make sure that that job was identified as a 21 proxy position and the consumer head was in the proxy. 22 If -- when Phil didn't take this job, the new 23 consumer head is now in the proxy. Okay? The regional 24 job is not in the proxy. So no, this -- that 25 compensation would not have gotten the proxy because I</p>	<p>Page 75</p> <p>1 create and what was in it for him. And he had to have 2 more money to do it. 3 I headed that off. I offered him an 4 additional 100,000, which would have meant his bonus 5 would have gone up. His annual individual compensation 6 would have gone up. His bonus would have gone up on top 7 of this. 8 This is probably what was stated, at the time, 9 in the documentation, not what I offered him in addition 10 to that, in that conversation. 11 Q. There's no reference to an additional 100,000 12 in this counterclaim, is there? 13 A. They need to put it in there, because at 14 the end of the day -- this compensation was going up at 15 the end of the day. This is more than he made the prior 16 year. His compensation was going up. 17 Q. This paragraph that you reviewed for accuracy 18 says his total annual compensation would have continued 19 at 2 million, 250. It says nothing about going up, does 20 it? 21 A. Didn't put it in the suit, didn't need to. It 22 was going -- it was going to go up if he took the 23 position. He didn't take the position. 24 Q. It's your position -- is it your position 25 today that the top five highest paid executives in the</p>

<p>Page 76</p> <p>1 company are not included in the proxy?</p> <p>2 MR. CIOFFI: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Please restate the question.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Sure. Is it your position today that the top</p> <p>7 five highest paid executives in the company are not</p> <p>8 included in the proxy?</p> <p>9 A. Is it my position that the top -- state that</p> <p>10 again. I'm not clear what you're asking.</p> <p>11 Q. Is it your position that the top five highest</p> <p>12 paid executives in the company are not included in the</p> <p>13 proxy?</p> <p>14 A. Top five highest paid -- it's not -- it's just</p> <p>15 not the highest paid. There's certain roles -- certain</p> <p>16 roles that have to be in the proxy. All right? CFO is</p> <p>17 one of them that has to be in the proxy. So it's not</p> <p>18 necessarily just the highest paid.</p> <p>19 But once you get past the ones that are</p> <p>20 required to be there, it's typically, all right -- and I</p> <p>21 think by requirement, it's the next highest paid</p> <p>22 executive officers.</p> <p>23 But once again, we've decided, because of the</p> <p>24 scope of the consumer job, that that job needed to be</p> <p>25 compensated to be in the proxy. All right? If -- his</p>	<p>Page 78</p> <p>1 support that decision because they understood that the</p> <p>2 consumer head was going to be in the proxy.</p> <p>3 Q. Did you communicate that to anybody in writing</p> <p>4 anywhere?</p> <p>5 A. No. Bob Shaffer and I had a conversation</p> <p>6 about it. I told him I was going to -- I was going to</p> <p>7 increase that. We're going to head that off because I</p> <p>8 knew Phil would want something, as always, and I was</p> <p>9 going to head that off. And I wanted to ensure that he</p> <p>10 was going to be the proxy, and I wanted to send him a</p> <p>11 message that this was, once again, going to elevate him</p> <p>12 to the proxy level and he was going to be compensated</p> <p>13 appropriately for it.</p> <p>14 Q. Are you now taking the position that paragraph</p> <p>15 20 of the counterclaim is inaccurate?</p> <p>16 MR. CIOFFI: Objection. That's not his</p> <p>17 testimony.</p> <p>18 MR. SABA: I know, because he hasn't answered</p> <p>19 the question yet. Let's let him answer the</p> <p>20 question.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Are you now taking a position that paragraph</p> <p>23 20 is inaccurate?</p> <p>24 MR. CIOFFI: You're saying -- by saying are</p> <p>25 you taking a position, you're referring back to his</p>
<p>Page 77</p> <p>1 compensation as it stood at the time of our discussion,</p> <p>2 I felt that it might fall short of what we were going to</p> <p>3 need to do. I was going to add more money, roughly</p> <p>4 \$100,000 to that, I communicated that, to his</p> <p>5 compensation if required, and I believe it was going to</p> <p>6 be required to make sure he was in the proxy.</p> <p>7 Q. This \$100,000 that you keep talking about --</p> <p>8 which is not referenced in the counterclaim -- is that</p> <p>9 in writing anywhere?</p> <p>10 A. No, it was a conversation Phil and I had when</p> <p>11 I explained to him the transition of an elevation of Tim</p> <p>12 to president, that he would be reporting in to Tim as</p> <p>13 president, because Tim had all lines of businesses in</p> <p>14 all the regions, and that he was going -- I was going to</p> <p>15 elevate his role to that of the head of the consumer</p> <p>16 bank, which now had about 60-plus percent of the gross</p> <p>17 revenue, and then I was also going to increase his</p> <p>18 salary to make sure he was in a proxy in this position.</p> <p>19 That was the conversation.</p> <p>20 Q. And do you have any notes from this meeting?</p> <p>21 A. Absolutely not. I wouldn't write something</p> <p>22 like that down until it became official. I was</p> <p>23 explaining what I was going to do; it had not become</p> <p>24 official. ACC still has to do a final approval of</p> <p>25 something of that nature, but I had no doubt they would</p>	<p>Page 79</p> <p>1 earlier testimony. I'm making an objection</p> <p>2 that that's not what he testified to. But go</p> <p>3 ahead. You can answer.</p> <p>4 THE WITNESS: Once again, this was done some</p> <p>5 time ago. At the end of the day, I believe this</p> <p>6 was probably the compensation on paper, not what I</p> <p>7 was communicating to him that I was going to do if</p> <p>8 he stepped into that role.</p> <p>9 BY MR. SABA:</p> <p>10 Q. And you actually reviewed this counterclaim</p> <p>11 contemporaneous with when these conversations would have</p> <p>12 occurred; is that correct?</p> <p>13 A. I reviewed this claim before it was filed.</p> <p>14 These compensation numbers came from the -- from the</p> <p>15 head of HR, the compensation group that was put into</p> <p>16 this -- my communication with Bob is, we need to make</p> <p>17 sure that this position was going to be in the proxy,</p> <p>18 and I think we may need to put another \$100,000 in it,</p> <p>19 and I was just going to communicate that to Phil.</p> <p>20 That's what transpired. So that's how the numbers, in</p> <p>21 my mind, were working. That's what I anticipated.</p> <p>22 So my guess is, if I was making an assumption,</p> <p>23 these are the numbers we had that weren't going to be</p> <p>24 reduced, and I added to it. It wasn't in writing, we</p> <p>25 hadn't finalized it yet, we hadn't proceeded with it</p>

<p>1 yet, we hadn't had final approval for it yet.</p> <p>2 Q. Are you aware of -- that Phil McHugh's</p> <p>3 testimony that you did not offer him any additional</p> <p>4 compensation with respect to the consumer banking role?</p> <p>5 MR. CIOFFI: Objection. Mischaracterizes</p> <p>6 supposed testimony.</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. CIOFFI: You can answer, if you know.</p> <p>9 THE WITNESS: I don't know. I'm going back</p> <p>10 through. I'm not sure what Phil recalls and</p> <p>11 doesn't recall. That's a big question mark. I</p> <p>12 will state one thing. There's never been a role</p> <p>13 that I've asked Phil to take that increases</p> <p>14 responsibilities where he didn't get more money and</p> <p>15 he didn't expect more money. Matter of fact, when</p> <p>16 I offered him position after position throughout</p> <p>17 his career, it was always about the hardship this</p> <p>18 was going to create. When I asked him to take on</p> <p>19 the regions, oh my God, this is going to create so</p> <p>20 much hardship. I need to talk to my wife.</p> <p>21 Next day, he comes back, I'll do it, but</p> <p>22 what's in it for me? Same thing when I moved him</p> <p>23 from Louisville up to Cincinnati, same thing I did</p> <p>24 when I moved him to the next position. Every</p> <p>25 promotion was followed by comments about the</p>	Page 80	<p>1 compensated along with any promotion, you would still</p> <p>2 promote him; is that right?</p> <p>3 A. Phil was a very competent leader and did a --</p> <p>4 and did a good job at the assignments he was given. All</p> <p>5 right? He would have done a good job as the head of</p> <p>6 consumer business if he'd taken the job. I have no</p> <p>7 doubt. And I wanted to recognize him for that, wanted</p> <p>8 to make sure he was in the proxy, and I wanted him to</p> <p>9 make -- make him feel that he was one of the top five</p> <p>10 guys in this company and very valued.</p> <p>11 This is a tremendous role. I've only got five</p> <p>12 of these roles, okay? And he's sitting in one of them.</p> <p>13 All right? He wasn't in one of those roles prior, where</p> <p>14 it was in the proxy. His compensation was going up; all</p> <p>15 of his benefits stayed the same. He wouldn't take the</p> <p>16 job because he refused to work for Tim Spence, and he</p> <p>17 refused to step into the consumer job because he</p> <p>18 wouldn't work for Tim Spence.</p> <p>19 Q. Phil McHugh used to be head of the consumer</p> <p>20 banking, didn't he?</p> <p>21 A. Very different job at the time Phil McHugh had</p> <p>22 it. The answer's yes, but different job though.</p> <p>23 Q. Referring to paragraph 21, it says, human</p> <p>24 hubris being what it is, the news about Mr. Spence</p> <p>25 angered plaintiff. How do you know that angered</p>
<p>1 hardship and then how much money am I going to</p> <p>2 make. So I knew this was coming, and I tried to</p> <p>3 get ahead of it.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Don't promotions typically come with an</p> <p>6 increase in compensation?</p> <p>7 A. Not all the time. Definitely not at Fifth</p> <p>8 Third. I was promoted every point in my career, and</p> <p>9 compensation always trailed by almost a year. But not</p> <p>10 in Phil's case.</p> <p>11 Q. So it's not uncommon at Fifth Third to move to</p> <p>12 some new position and not receive an increase in</p> <p>13 compensation?</p> <p>14 A. More than -- it's more the norm. We do -- we</p> <p>15 do increases on a normal basis, typically in February.</p> <p>16 If you get promoted prior to February, it's not -- it's</p> <p>17 typically not -- we typically don't do an increase.</p> <p>18 Now, that doesn't mean it's all the time, doesn't mean</p> <p>19 we don't do it. I'm saying oftentimes we do not. In my</p> <p>20 career, when I was promoted multiple times throughout my</p> <p>21 old career, I don't recall getting an increase the day I</p> <p>22 was promoted except for when I became, I believe,</p> <p>23 president or CEO. I think at that point, they made some</p> <p>24 adjustments. But typically, I did not.</p> <p>25 Q. And notwithstanding Phil's interest in being</p>	Page 81	<p>1 Mr. McHugh?</p> <p>2 A. Because in my office, when he refused to do</p> <p>3 the job, told me he wouldn't do the job and he wouldn't</p> <p>4 work for Tim Spence, he walked out of my office. The</p> <p>5 last conversation I had was he wouldn't take the job, he</p> <p>6 wouldn't take -- work for Tim Spence, and he was the</p> <p>7 most respected executive on this floor. And then he</p> <p>8 walked out. That's how I'm referring to him as angry.</p> <p>9 Q. Do you recall the date of that conversation?</p> <p>10 A. It would have been the Thursday before he</p> <p>11 quit, because I believe it was a Thursday, not a Friday.</p> <p>12 So I think -- I believe I spoke with him on a Tuesday.</p> <p>13 He told me he needed a couple days; he walked by my</p> <p>14 office. Once again, when I told him what we were doing</p> <p>15 with Tim Spence, it wasn't, why not me? What he said,</p> <p>16 you surprised me on my timing, I need to talk to my wife</p> <p>17 and think about this. He walks by my office the next</p> <p>18 day, which was a Wednesday, told me, I surprised him on</p> <p>19 the timing; he wasn't expecting this.</p> <p>20 All about timing, not that he wasn't the</p> <p>21 president or CEO. And then the next day, he walks in my</p> <p>22 office -- I believe that would have been a Thursday --</p> <p>23 and he told me he would not take the job, he would not</p> <p>24 work for Tim Spence, that he was the most respected</p> <p>25 executive on the floor, and he wasn't going to do it.</p>

<p>Page 84</p> <p>1 And he walked out.</p> <p>2 I did not talk to him again ever since then.</p> <p>3 The only communication I had was with Bob Shaffer and</p> <p>4 Susan Zaunbrecher, our chief legal officer, prior to the</p> <p>5 suit being filed.</p> <p>6 Q. These conversations, they were in October of</p> <p>7 2020; is that right?</p> <p>8 A. It would have been right prior to the</p> <p>9 announcement of -- of Tim Spence becoming president,</p> <p>10 because these conversations had to be -- I had to have</p> <p>11 these conversations prior to the announcement so the</p> <p>12 organization could be adjusted and aligned for the</p> <p>13 announcement.</p> <p>14 Q. Do you recall those being in October of 2020?</p> <p>15 A. I would assume, based on the timing of the</p> <p>16 announcement, that that would have been the timeframe,</p> <p>17 yes. I don't have my calendar in front of me to be more</p> <p>18 specific than that.</p> <p>19 Q. Referring back to paragraph 21. The second</p> <p>20 sentence starts in a fit of petulance, plaintiff told</p> <p>21 Carmichael that he would not accept the assignment of</p> <p>22 head of consumer banking.</p> <p>23 What -- what -- what do you mean there by in a</p> <p>24 fit of petulance?</p> <p>25 A. Well, I didn't write the wording. I wouldn't</p>	<p>Page 86</p> <p>1 He can turn the head of consumer bank down,</p> <p>2 but it's not his role and responsibility to determine</p> <p>3 what's in the best interest of the company. That's what</p> <p>4 I get paid to do. He refused to give up the job. All</p> <p>5 right? I wasn't asking him if he wanted to give up the</p> <p>6 job. I was making an organization change that was in</p> <p>7 the best interest of the company, that was at the</p> <p>8 direction of the board, to support the promotion of Tim</p> <p>9 Spence as president. All right?</p> <p>10 For him to tell me he's not giving up</p> <p>11 something, he's not doing this or he's not doing that --</p> <p>12 it's always about Phil McHugh; it's never about the</p> <p>13 company first in these discussions. So he puts himself</p> <p>14 at what he wants, not what the company needs. And he</p> <p>15 refuses to give up the job. And he tells me he's</p> <p>16 refusing to give up the job, he's refusing to do a top</p> <p>17 five job in the company, he's refusing to go into</p> <p>18 the proxy, all right, and he's refusing to report to Tim</p> <p>19 Spence. That's what we're referring to here.</p> <p>20 And what he expected me to do, I'm assuming,</p> <p>21 based on prior reactions, is he expected me to change my</p> <p>22 position and potentially say that this job wouldn't --</p> <p>23 this consumer head wouldn't report to Tim Spence and</p> <p>24 report directly to me or that he could keep the regions</p> <p>25 reporting to me, but he's already been out there telling</p>
<p>Page 85</p> <p>1 -- that's not how I would word things. He was angry; he</p> <p>2 was upset. But it wasn't that he wasn't being promoted</p> <p>3 to president; that was -- he knew exactly who the</p> <p>4 president was going to be. All right? He didn't want</p> <p>5 to report to Tim Spence, and he didn't want to give up</p> <p>6 his regional role because he enjoyed the regional role.</p> <p>7 By the way, you're not entitled to the regional job.</p> <p>8 It's not an entitlement job. None of our jobs are</p> <p>9 entitled. So he was angered by the fact that he had to</p> <p>10 give up the regions to report to Tim Spence.</p> <p>11 Q. But are you able to tell me what was meant by</p> <p>12 "in a fit of petulance"? You said it's not your word,</p> <p>13 so if you don't know, you don't know.</p> <p>14 A. I don't know. I just told you how I would</p> <p>15 have described it.</p> <p>16 Q. Okay. In paragraph 23, it says immediately</p> <p>17 thereafter, the guerilla litigation tactics began. What</p> <p>18 is meant by "guerilla litigation tactics." What does</p> <p>19 that mean?</p> <p>20 A. Let me read the whole paragraph here. Okay.</p> <p>21 This is referring to the fact that Phil refused to give</p> <p>22 up, like it's his decision that he -- it's my decision,</p> <p>23 not Phil McHugh's decision -- that he's going to run the</p> <p>24 regions or he's going to be the head of consumer</p> <p>25 banking.</p>	<p>Page 87</p> <p>1 people he wouldn't report to Tim Spence. So he has a</p> <p>2 situation he's dealing with now, and that's what I</p> <p>3 believe came forth in our conversation.</p> <p>4 Q. And that's your understanding of guerilla</p> <p>5 litigation tactics; is that right?</p> <p>6 MR. CIOFFI: Objection. The document speaks</p> <p>7 for itself. You got to let him read the whole</p> <p>8 document.</p> <p>9 THE WITNESS: I don't believe that any</p> <p>10 employee should hold the company hostage. I</p> <p>11 believe people work at the pleasure of the company.</p> <p>12 I report to the board at the pleasure of the board.</p> <p>13 Our first responsibilities are always to our</p> <p>14 shareholders and the company's health and</p> <p>15 well-being, and to our employees.</p> <p>16 For someone to put themselves ahead of that</p> <p>17 and make it about them when they're getting a</p> <p>18 raise, they're not -- they're getting all the perks</p> <p>19 and everything, being one of the top five jobs, of</p> <p>20 putting themself ahead of what's best for the</p> <p>21 organization, guerilla tactics. And that's going</p> <p>22 to force me -- because he won't do this -- it's</p> <p>23 going to force me to change what's in the best</p> <p>24 interest of the company. Not acceptable.</p> <p>25 BY MR. SABA:</p>

<p>Page 88</p> <p>1 Q. Referring to paragraph 22, it says plaintiff 2 then left the Fifth Third center, refused to follow 3 Carmichael's directive to assume the role of head of 4 consumer banking, and refused to return to work. 5 Do you see that? 6 A. I do. 7 Q. Didn't Mr. Shaffer actually tell Phil McHugh 8 not to come back? 9 A. I don't know which -- I wasn't part of the 10 conversation that Phil had with -- with Mr. Shaffer. At 11 the end of the day, Phil refused to do the job. In our 12 -- in our -- by company policy and by any definition, 13 when you refuse to do a top job, you're quitting the 14 company. So if you're not going to do the job, there's 15 no need to come in because you've already quit the 16 company. And that's what he did. 17 (Exhibit 4 is marked for identification.) 18 BY MR. SABA: 19 Q. Mr. Carmichael, I've handed you what's been 20 marked as Exhibit Number 4. And this is defendant's 21 Fifth Third Bank National Association Gregory 22 Carmichael's initial rule 2680 disclosures to the court. 23 Have you ever seen this document before? 24 A. I believe this is the complaint that was filed 25 against Fifth Third by Phil McHugh.</p>	<p>Page 90</p> <p>1 engaged in age discrimination against him; is that 2 right? 3 A. I'm aware of that claim, yes. 4 Q. Okay. And is it your position that making 5 that claim by Phil McHugh is an abuse of process? 6 MR. CIOFFI: Objection. The counterclaim 7 speaks for itself, what is an abuse of process. 8 The witness is not an attorney, cannot opine or 9 speculate as to what "abuse of process" means under 10 the facts as set forth in the counterclaim. You 11 can ask him if he can answer the question. 12 BY MR. SABA: 13 Q. Go ahead. Can you answer the question? 14 A. There was -- there was -- there was a 15 significant amount of allegations that were made, in the 16 filing of the suit, against Fifth Third by Phil McHugh 17 that were completely erroneous, not factual, 18 misrepresented facts, disclosed what I believe is 19 sensitive information into the street that caused damage 20 to the bank, harm to the bank, once again putting 21 himself above the company. 22 And at the end of the day, very inappropriate. 23 Age never ever had a factor in any of the discussions, 24 and that's an afterthought after he quit the bank, 25 trying to find a way to increase the amount of damages</p>
<p>Page 89</p> <p>1 Q. Let me represent to you it's not that. These 2 are initial disclosures filed on the bank's behalf and 3 on your behalf with the court. 4 A. Okay. Can I read through this? 5 Q. You can read through it and see if -- 6 A. I'm just reading the headlines here, so... 7 MR. CIOFFI: Yeah, take your time, read the 8 document. 9 THE WITNESS: Okay. 10 BY MR. SABA: 11 Q. Mr. Carmichael, were you aware that, in your 12 counterclaim, you were seeking punitive damages to be 13 awarded against Phil McHugh for filing an age 14 discrimination claim against you and Fifth Third Bank? 15 MR. CIOFFI: Objection. It mistakes the 16 record. The counterclaim speaks for itself. It's 17 not for filing a counterclaim, it's for abuse of 18 process. It's clear from the document itself. 19 You're mischaracterizing it purposefully, Counsel. 20 Read the question back, please. 21 MR. SABA: Certainly. 22 (The record was read.) 23 BY MR. SABA: 24 Q. You understand that Phil McHugh has filed the 25 litigation. He's claiming that you and Fifth Third Bank</p>	<p>Page 91</p> <p>1 he's seeking from Fifth Third. And it was all an 2 afterthought of him being the CEO. So at the end of the 3 day, there was no substance to his claims against Fifth 4 Third. The majority of what he was claiming was not 5 accurate, was not factual, didn't occur in the way it 6 was stated, and we never made a decision based on age. 7 Q. And as a result of -- 8 A. It was always the board's decision. It's not 9 Greg Carmichael. I'm being -- I'm being, you know, 10 called out here and being sued here, and I don't make 11 that decision. The board makes the decision. So if him 12 not being promoted to CEO is what you guys are arguing, 13 then that's the board's decision, not mine. And they're 14 not -- and it's me in here. 15 Q. And as a result of that, you're seeking 16 punitive damages against Phil McHugh? Isn't that right? 17 MR. CIOFFI: Objection. That's not what the 18 document says. The document speaks for itself. 19 BY MR. SABA: 20 Q. Are you aware that your counterclaim is 21 seeking punitive damages? 22 A. I'm aware we're seeking damages for the harm 23 done by that -- this suit. 24 Q. And that includes punitive damages; isn't that 25 right?</p>

<p>1 A. I'm not a lawyer. I'll defer to my counsel 2 for it. 3 Q. Do you know why you're seeking punitive 4 damages against Phil McHugh? 5 MR. CIOFFI: Objection. The document sets 6 forth clearly the counterclaim of why punitive 7 damages are sought and the legal authority for it. 8 He's not a lawyer; he cannot speculate about that. 9 And if -- if you know the legal basis for the 10 punitive damages, you can answer the question. 11 Otherwise -- 12 BY MR. SABA: 13 Q. I'm asking for your understanding; I'm not 14 asking for a legal basis. What is your understanding of 15 why you are seeking punitive damages against Phil 16 McHugh? 17 MR. CIOFFI: Objection. The basis, as stated 18 in the counterclaim, is legal authority from the 19 Supreme Court of Ohio. He's not a lawyer; he 20 doesn't -- he can't opine about that. 21 BY MR. SABA: 22 Q. I'm asking about your understanding, not 23 Mr. Cioffi's. What is your understanding of why you are 24 seeking punitive damages against Phil McHugh in your 25 counterclaim?</p>	<p>Page 92</p> <p>1 Q. That the -- that the punitive damages that are 2 sought accomplishes the twin aims of punishment and 3 deterrence as to plaintiff Phil McHugh? 4 A. I'm not going to argue the wording. The 5 wording is what it says. But at the end of the day, we 6 don't -- individuals who bring false claims against the 7 company intentionally to harm the company, in order to 8 get -- extract money from the company because they 9 didn't get what they wanted is not -- is not something 10 that's acceptable in a professional workplace and 11 something that should never occur. It's occurring in 12 this case because he never thought he'd file this 13 lawsuit when he did. Now he has to defend it, and the 14 claims were egregious, incorrect, inaccurate, and put 15 the organization at risk with our shareholders, our 16 investment community, analysts, and at the end of the 17 day, this is something we wouldn't want to see occur 18 again. 19 Q. And what you're including in those egregious 20 and false claims are Phil McHugh's claims of age 21 discrimination; isn't that right? 22 A. There's substantially more claims -- 23 MR. CIOFFI: Objection. 24 MR. SABA: My question, sir, are you including 25 claims of age discrimination in what you consider</p> <p>Page 94</p>
<p>1 MR. CIOFFI: Objection. It's a legal 2 conclusion. He cannot form a legal conclusion. 3 BY MR. SABA: 4 Q. Go ahead. You can answer. 5 A. I can't form a legal conclusion, so therefore, 6 I'm not going to answer that question. 7 Q. I'm asking for your understanding, not for a 8 legal conclusion. 9 A. My understanding, we are seeking damages 10 because of the erroneous, harmful damage that that suit 11 did to Fifth Third, myself, and all involved on false 12 claims that were made, blatant false claims that were 13 made by the plaintiff. 14 Q. And referring you to paragraph 9 -- to page 9 15 of Exhibit 4, which is the initial disclosures. And the 16 paragraph that is -- the first paragraph at the top, it 17 ends at the top. The last sentence reads, more 18 important than that, this figure is both reasonable, 19 equal to one year plaintiff's pay, and accomplishes the 20 twin aims of punishment and deterrence as to plaintiff; 21 isn't that right? 22 A. That's what this says. 23 Q. Okay. Do you agree with that sentence? 24 A. Do I agree with what in the sentence? 25 Rephrase the question.</p>	<p>Page 93</p> <p>1 to be egregious and false claims? 2 THE WITNESS: No. 3 MR. CIOFFI: Objection to the form of the 4 question. The basis of the counterclaim is stated 5 in the counterclaim. The witness's understanding 6 of the law is totally irrelevant to that. 7 MR. SABA: I'm asking for his understanding. 8 MR. CIOFFI: If you have an understanding of 9 the basis for the counterclaim and abuse of 10 process, you can answer the question. If you 11 don't, I'll instruct you not to answer the 12 question -- if he doesn't have an understanding of 13 the law. 14 BY MR. SABA: 15 Q. So back to my question. My question's 16 specific. You referred to the egregious and false 17 claims that were raised by the plaintiff. I said, is 18 the claim of age discrimination by Phil McHugh included 19 in your list of egregious and false claims made by the 20 plaintiff? Or are you -- 21 MR. CIOFFI: Objection. 22 MR. SABA: Let me finish my question. 23 BY MR. SABA: 24 Q. -- or are you claiming that's an accurate 25 claim by Phil McHugh and not egregious or false?</p> <p>Page 95</p>

<p>1 MR. CIOFFI: Objection. The base of the claim 2 is abuse of process, has nothing to do with the 3 lawsuit filed by Phil McHugh. 4 BY MR. SABA: 5 Q. Go ahead, Mr. Carmichael. 6 MR. CIOFFI: You -- you can answer 7 the question, but with this proviso. I'm going to 8 instruct you, as your counsel, that if you 9 understand the law of abuse of process in Ohio, you 10 may answer the question. If you don't, you may 11 not. 12 THE WITNESS: I'm not going to answer your 13 question because I don't fully understand the role. 14 MR. SABA: That's not a basis for not 15 answering a question. Whether you try and create 16 an answer or create an obstruction. 17 MR. CIOFFI: You're asking a question 18 that's -- that is -- 19 MR. SABA: I'm asking for his understanding. 20 I'm asking for the basis of this claim; he's 21 identified that they are bringing this claim for 22 punitive damages because of all the egregious and 23 false claims made by Mr. McHugh. My specific 24 question goes to, is he including in his list of 25 egregious and false claims the claim of age</p>	<p>1 qualifications. And when you get around to asking about 2 that, I'll give you a litany of reasons why he was never 3 qualified -- considered ever to be the CEO of the 4 company. 5 Q. Is it your position that Phil McHugh's claims 6 that -- that Fifth Third and yourself have engaged in 7 age discrimination, that those are false and egregious? 8 A. There's no substance for those claims, I 9 believe. 10 Q. As part of your support and recommendation for 11 Tim Spence to become CEO of Fifth Third Bank, did you 12 make Tim Spence a promise that he would not settle the 13 litigation with Phil McHugh? 14 MR. CIOFFI: Objection. Objection. Assumes 15 facts not in evidence. You may answer. 16 THE WITNESS: I'd love to answer this one. 17 Absolutely not. Absolutely not. 18 BY MR. SABA: 19 Q. Before your departure from Fifth Third Bank, 20 did you make any individuals promise you that they would 21 not settle the litigation with Phil McHugh? 22 A. I don't make people make promises to me. So 23 no. I don't make people make promises to me. I have no 24 authority to ask for a promise when I'm leaving the 25 company, I'm no longer involved in the company.</p>
<p>1 discrimination brought by Mr. McHugh against you 2 and Fifth Third Bank? 3 MR. CIOFFI: Objection. That's not the basis 4 of the counterclaim, and you know that. 5 MR. SABA: That's right. There's your 6 objection. Let him answer. 7 THE WITNESS: I'm not a lawyer. I'm not going 8 to comment on that. My reference was, the claims 9 that he made about being promised this or promised 10 that about being CEO, those conversations never, 11 never occurred about him being CEO outside of being 12 considered for emergency successor. That's what 13 I'm referring to, all right? Nothing to do with 14 his age was ever, ever, ever a consideration as I 15 thought about the claims. The claims I'm talking 16 about is making statements that were false, not 17 about age. 18 BY MR. SABA: 19 Q. So are his claims about age not false? 20 A. We never had a discussion about age. Age was 21 never a factor. All right? He -- he can claim whatever 22 he -- he needs to claim or considers he wants to claim 23 after the fact. But during the process, and as long as 24 he's worked for me, age was never a factor in any of the 25 discussions. It was a board decision based on</p>	<p>1 The company makes its own decisions. 2 Q. Did you make any statements to anyone at Fifth 3 Third Bank that Phil will not work in the banking 4 industry again? 5 A. I didn't make any comments, that I'm aware of, 6 on that topic. I mean, obviously, when you sue your 7 employer, I think you're going to be challenged to work 8 anywhere. That's -- that's -- that's just a matter of 9 fact. That's not my position, that's my -- that's just 10 what typically happens, so. 11 If something was said there, you know, I'm not 12 aware of it, but I think that's just common knowledge. 13 Q. Did you tell any individuals at Fifth Third 14 Bank that you were furious at Phil McHugh for making 15 claims of age discrimination against you and the bank? 16 A. I was -- I was -- I was not pleased, 17 frustrated that -- that false claims were made against 18 the bank, had nothing to do with age -- age 19 discrimination. The claims I was referring to was his 20 claim that I told him he was going to be the next CEO of 21 the company, and I made a promise. That's what I would 22 be upset about. 23 Q. And you were upset? 24 A. No, I was very pleased about everything. Yes, 25 I was -- I was not happy. I'm not sure of anyone who</p>

<p>Page 100</p> <p>1 gets sued, false claims brought against the company and 2 themselves, that would be happy about something like that. 3 Q. Did you recommend to the board that Tim Spence 4 should succeed you as president and CEO of Fifth Third 5 Bank? 6 A. I agree with the board's position that he 7 should be the next CEO and president of Fifth Third 8 Bank. There was a consensus building. It was the 9 board's decision. We had lengthy discussions. At the 10 talent management process, I was asked for my opinion 11 and my thoughts on his qualifications as a data point 12 for the board. I don't control the board, I don't -- 13 they don't rubber stamp my decisions; they ask for my 14 input. I believe Tim will make a great -- and has made 15 a great president and CEO of this company. 16 Q. And was that the opinion you shared with the 17 board? 18 MR. CIOFFI: Objection. Asked and answered. 19 He just answered it. 20 BY MR. SABA: 21 Q. When did you share that opinion with the 22 board? 23 MR. CIOFFI: Objection. 24 THE WITNESS: Throughout -- throughout a 25 lengthy process of assessing Tim, I would have</p>	<p>Page 102</p> <p>1 different position than I recommended. The board 2 doesn't rubber stamp anything for the CEO. This is a -- 3 board's a very serious position. 4 You know, we are heavily regulated. These are 5 very strong individuals that have been brought onto the 6 board because of their capabilities. They're 7 independent. My -- I get one vote. In an executive 8 session, I get 0 votes. I have an opinion; they make 9 the decisions. I never would have said my vote was the 10 only one that counts. 11 Q. When -- 12 A. That would be ludicrous. 13 Q. -- when specifically has the board deviated 14 from a recommendation made by you? 15 A. Throughout my career as -- as CEO. I would 16 have discussions on -- strategic discussions, potential 17 NMA opportunities, which I'm not going to go into any 18 more. Detailed -- that's privileged information and 19 confidential. 20 They would -- they have -- they have 21 disagreed. They have taken different approaches. They 22 have asked for -- for another option. Those things 23 happen all the time. I don't get a rubber stamp. 24 Q. With respect to the recommendation you have 25 made in promoting an individual or employee, when has</p>
<p>Page 101</p> <p>1 shared that opinion during the talent review 2 process in 2019, as I put him on there, I think, 3 you know, ready for president in a year and CEO in 4 two years. I would have -- I would have shared my 5 opinion, that of his readiness and his 6 qualifications. 7 BY MR. SABA: 8 Q. When you say "ready for president" in a year, 9 two years, are you referring to what would be in the 10 talent decks? 11 A. I would have had that in the talent deck in 12 the 2019 discussion. That would have been in there. 13 I'm not sure the exact date, but I would have had him in 14 there at that point. 15 Q. With respect to the board, have you ever made 16 the statement, I am the only vote that really matters? 17 A. Absolutely never. 18 Q. You never said that? 19 A. No. If I said that to our board, they 20 would -- they would question my judgment and my 21 leadership capabilities because that's not my decision. 22 And -- and at the end of the day, the board oftentimes 23 would -- would basically deviate from my recommendation 24 or what I believe was right -- might be the right thing 25 for the business. Numerous times, the board has taken a</p>	<p>Page 103</p> <p>1 the board deviated from your recommendation? 2 A. Ask the question -- because the only -- the 3 only time the board has input on those type of decisions 4 if it's a president or CEO. The other positions, that's 5 my job and my responsibility to make those moves that 6 best -- that best supports the needs of the business and 7 the best interest of our shareholders. 8 The only time that -- that I recommend 9 something to the board, I may inform the board of -- of 10 things I'm doing, but the only time I ask for their 11 support in a vote is president and CEO. 12 Q. And they've never deviated from your 13 recommendation with respect to president and CEO, have 14 they? 15 MR. CIOFFI: Objection to the form and the 16 sequence of the question in terms of the timeframe 17 we're talking about. 18 THE WITNESS: Listen, just -- the board, and 19 individuals on the board, one in particular, 20 recommended we bring in Tim Spence because of his 21 deep industry knowledge, his deep strategic 22 understanding, his innovative mindset, his 23 understanding of our competitors, the deep 24 knowledge he had on the industry. When we brought 25 Tim in, from that point forward, the board has been</p>

<p>Page 104</p> <p>1 assessing Tim as someone who has the qualifications 2 that they believe will make it necessary for the 3 next CEO. They vetted him over years. That 4 position was formed over years that he would be -- 5 potentially become the next CEO and president. It 6 started becoming more solidified as you approached 7 the 2019 talent review discussion.</p> <p>8 The board has always thought he had the 9 qualifications, the skill set. There was things 10 that they wanted to continue to watch in Tim's 11 development, roles and responsibility. But that 12 was the board's decision, all right? Did I agree 13 with it? Did I think he was absolutely the right 14 person to step in?</p> <p>15 I agreed with that. I felt that way. All 16 right? But I don't make that call. I have -- I 17 have input to the process; I have input to the 18 individuals, but they make the call. They can ask 19 for anything they want to ask for.</p> <p>20 Q. That wasn't my question. My question is, has 21 the board ever deviated from a recommendation that 22 you've made for president and/or CEO of Fifth Third 23 Bank?</p> <p>24 MR. CIOFFI: Objection. He did answer the 25 question. You don't like the question{sic}, so you</p>	<p>Page 106</p> <p>1 THE WITNESS: I didn't recommend him as CEO; I 2 recommended him as the potential for the board's 3 consideration, based on feedback from the board, 4 based on my personal experience and what I thought 5 was in the best interest of the company. The board 6 recommends him as the CEO. The board votes on 7 that. Greg Carmichael doesn't vote on that.</p> <p>8 BY MR. SABA:</p> <p>9 Q. So, in that recommendation you would have made 10 in the December 2019 board meeting; is that correct?</p> <p>11 A. I -- I identified him as a potential president 12 within a year. You want to call that a recommendation? 13 I identified talent that could be in that position.</p> <p>14 Q. Okay. And had the board -- Mr. Cioffi 15 indicated the board had already made a decision prior to 16 that recommendation. Had the board already made a 17 decision that Tim Spence be president prior to that 18 recommendation?</p> <p>19 MR. CIOFFI: Objection. He answered at length 20 the board's assessment over a number of years about 21 Tim Spence. At what -- I mean, what -- why do you 22 keep asking the same question over and over?</p> <p>23 MR. SABA: It's not the same question. I'm 24 trying to understand your -- your insertion{sic} 25 that the board made a decision that -- that Tim</p>
<p>Page 105</p> <p>1 keep asking it again. He answered the question. 2 Do you want to add anything to your answer?</p> <p>3 THE WITNESS: I put him on -- I put him on the 4 potential list, as the document supports. I put 5 Phil in there as emergency successor, as I promised 6 him I would. All right? The board then makes 7 the -- continues to make that call. The board 8 expected him to be the next president. They 9 expected to see that in there. All right.</p> <p>10 I wasn't necessarily making the 11 recommendation, I was supporting the fillings in 12 the direction of the board, but I also agreed with 13 that. And by the way, that only happened with one 14 time in my career.</p> <p>15 BY MR. SABA:</p> <p>16 Q. And they agreed with you, correct?</p> <p>17 MR. CIOFFI: Objection. He answered the 18 question already.</p> <p>19 BY MR. SABA:</p> <p>20 Q. They did not deviate from your recommendation, 21 correct?</p> <p>22 MR. CIOFFI: Objection. The decision of the 23 board happened before any recommendation. He 24 testified to that. You're trying to change his 25 testimony.</p>	<p>Page 107</p> <p>1 Spence would be the next president and CEO before 2 Mr. Carmichael made his recommendation.</p> <p>3 MR. CIOFFI: And he explained why.</p> <p>4 MR. SABA: So the board had already made a 5 decision before you made that recommendation in 6 December 2019?</p> <p>7 MR. CIOFFI: Objection. Mischaracterized his 8 prior testimony.</p> <p>9 THE WITNESS: Let me be clear. The board 10 doesn't make -- didn't make a decision at that 11 point. If the board made a decision, that's a 12 public disclosure. Okay? The board didn't make a 13 decision. The board was -- was continuing their 14 process of succession planning and identifying 15 talent in the organization that could someday 16 elevate to CEO. All right?</p> <p>17 Was the board leaning towards that? Did the 18 board believe that he -- he was the best qualified 19 candidate? They were -- they were of like mind, 20 and unanimous like mind, that he was qualified and 21 potentially the next CEO and could become the next 22 CEO and president of Fifth Third Bank.</p> <p>23 There were still processes that had to be 24 vetted, RHR's being one of them, as an example, one 25 of those process. If that assessment came back</p>

<p style="text-align: right;">Page 108</p> <p>1 very negative and said something different, the</p> <p>2 board hadn't made their decision yet. But you have</p> <p>3 candidates. You have individuals they've</p> <p>4 identified that I supported could step into that</p> <p>5 role. And that became more solidified in 2019.</p> <p>6 But the consensus of the board that he was the</p> <p>7 right guy happened over years, not just one year.</p> <p>8 I don't know how to make that any clearer.</p> <p>9 MR. CIOFFI: Counsel, as you think about your</p> <p>10 next question, do you want to break for lunch in 15</p> <p>11 minutes, 20 minutes? Follow with your notes. I'm</p> <p>12 just thinking around 12:30 might be a good time.</p> <p>13 But keep going; I don't want to interrupt your line</p> <p>14 of questioning. Let's go to at least 12:30; we can</p> <p>15 talk about it.</p> <p>16 MR. SABA: That's fine. We can talk about it.</p> <p>17 MR. CIOFFI: Okay.</p> <p>18 BY MR. SABA:</p> <p>19 Q. When did you first meet Phil McHugh?</p> <p>20 A. I joined the company in 2003. He was in</p> <p>21 Louisville, I think, running the commercial bank or</p> <p>22 wealth; I'm not sure which. I think it was the</p> <p>23 commercial bank. Reported to Jim Gaunt. Jim stepped</p> <p>24 down and Phil became president. So it was somewhere in</p> <p>25 that timeframe, I ran into Phil and met Phil. Don't</p>	<p style="text-align: right;">Page 110</p> <p>1 as -- when I was like a timing -- between when I had the</p> <p>2 regions. There may have been a little window of time</p> <p>3 there when he reported to me as one of the regional</p> <p>4 leaders. At the time, they were called affiliates.</p> <p>5 Q. You brought him up to Cincinnati in 2010; is</p> <p>6 that right?</p> <p>7 A. I believe that's roughly the timeframe, to run</p> <p>8 the wealth group for Fifth Third Bank.</p> <p>9 Q. Okay. He was promoted to senior vice</p> <p>10 president, head of investment advisors?</p> <p>11 A. I don't have his career path in front of me,</p> <p>12 but I brought him up here to lead the wealth group. I</p> <p>13 could have my dates off somewhere, but that's what he</p> <p>14 came up for.</p> <p>15 (Exhibit 5 is marked for identification.)</p> <p>16 BY MR. SABA:</p> <p>17 Q. Mr. Carmichael, I've handed you what's been</p> <p>18 marked as Exhibit Number 4. Can you identify that for</p> <p>19 me, please?</p> <p>20 A. Excuse me. This is marked Exhibit Number 5.</p> <p>21 Q. 5, excuse me. Thank you. Just by way of</p> <p>22 correction, Exhibit Number 5 is Bates stamped Fifth</p> <p>23 Third McHugh 000695 through 000700. Is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. Can you identify Exhibit Number 5 for me,</p>
<p style="text-align: right;">Page 109</p> <p>1 know exactly what year or date. But it would have been</p> <p>2 a long time ago. It would have been prior to 20 -- 2005</p> <p>3 timeframe.</p> <p>4 Q. And you said he was -- what was Phil's</p> <p>5 position at that time?</p> <p>6 A. It was one of the business line heads that --</p> <p>7 down in Louisville. I believe it was a commercial bank,</p> <p>8 but I could be wrong.</p> <p>9 Q. You are aware that Phil became president and</p> <p>10 CEO of the Louisville region shortly after you started</p> <p>11 with the bank; is that right?</p> <p>12 A. I am aware of that, as I just mentioned.</p> <p>13 Replaced Jim Gaunt, I believe.</p> <p>14 Q. Did Phil McHugh eventually report to you?</p> <p>15 A. He did.</p> <p>16 Q. When does that begin?</p> <p>17 A. I believe he reported to me -- let me think</p> <p>18 back here. When I had the regions, where was Phil at --</p> <p>19 was he still -- he may have been -- when I had</p> <p>20 responsibilities for the region, he may have been a</p> <p>21 regional, president, at that time, of Louisville. I --</p> <p>22 that's a lot of years ago. I don't really recall. I do</p> <p>23 know, when I brought him up here to head wealth, he</p> <p>24 reported to me, running the wealth group, when I brought</p> <p>25 him up from Louisville. But he may have reported to me</p>	<p style="text-align: right;">Page 111</p> <p>1 please.</p> <p>2 A. Looks like an old performance management form</p> <p>3 that we used back in this timeframe.</p> <p>4 Q. The timeframe being 2011; is that right?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. Have you seen this document before?</p> <p>7 A. Well, if this is the review I did, I would</p> <p>8 have -- I would have put it together. But that's been</p> <p>9 12 -- 13 years ago, so I don't recall it, but my name's</p> <p>10 on it; I put it together.</p> <p>11 Q. Okay. And to be specific, can we turn to</p> <p>12 Fifth Third McHugh 000700. It refers to you as manager;</p> <p>13 is that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And it's dated March 6, 2012; is that right?</p> <p>16 A. It is correct.</p> <p>17 Q. And this would have been for Phil McHugh's</p> <p>18 performance for 2011; is that right?</p> <p>19 A. Apparently so.</p> <p>20 Q. And with respect to this review of Phil</p> <p>21 McHugh, what were his -- what were his duties at that</p> <p>22 time? Are you able to identify that from Exhibit 5?</p> <p>23 A. Let me just read it. So he ran the --</p> <p>24 the wealth division, which we called investment advisory</p> <p>25 division at that time.</p>

<p>Page 112</p> <p>1 Q. And with respect to Phil's performance that</p> <p>2 year, how was his performance in 2011?</p> <p>3 MR. CIOFFI: Objection. The document speaks</p> <p>4 for itself. You want him to read something from</p> <p>5 here? Or you're really not expecting him to</p> <p>6 remember something from 12 years ago?</p> <p>7 THE WITNESS: I'm going to go to the same page</p> <p>8 he has, and I'm going to read it off, what I wrote</p> <p>9 here.</p> <p>10 Core values were very strong, which you would</p> <p>11 expect from Phil, does a great job in that area.</p> <p>12 Leadership competencies, I gave him strength.</p> <p>13 Community involvement was effective. Strategic in</p> <p>14 this type of role, the role he was filling at this</p> <p>15 time, which is not the CEO role, was strength.</p> <p>16 And talent for this role in this position, I gave</p> <p>17 him a strength. So it was a good review, which I</p> <p>18 would expect.</p> <p>19 MR. SABA:</p> <p>20 Q. Your overall comment at the end is, Phil has</p> <p>21 done a great job leading the IA team and continues to</p> <p>22 step up as a leader in other critical issues for the</p> <p>23 bank. Is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. You indicate, I appreciated his support on</p>	<p>Page 114</p> <p>1 of the investment advisory group, so similar to the</p> <p>2 2011, same organization, same responsibilities.</p> <p>3 Q. And how was Phil McHugh's review in 2012,</p> <p>4 before 2012?</p> <p>5 MR. CIOFFI: Objection. The document speaks</p> <p>6 for itself.</p> <p>7 THE WITNESS: In the role he was performing,</p> <p>8 he did extremely well, and I gave him a very, very</p> <p>9 strong rating. Once again, it says Phil does a</p> <p>10 good job in these type of assignments.</p> <p>11 MR. CIOFFI: Counsel, it's 12:30; do you want</p> <p>12 to take a break?</p> <p>13 MR. SABA: Sure. That's fine.</p> <p>14 MR. CIOFFI: You're finished with that 2012,</p> <p>15 right?</p> <p>16 MR. SABA: Yeah, that's fine.</p> <p>17 VIDEOGRAPHER: Time is 12:28 p.m. We're going</p> <p>18 off the record.</p> <p>19 (A recess was taken from 12:28 to 1:06.)</p> <p>20 VIDEOGRAPHER: Time is 1:06 p.m. We're back</p> <p>21 on the record.</p> <p>22 (Exhibit 7 is marked for identification.)</p> <p>23 BY MR. SABA:</p> <p>24 Q. Mr. Carmichael, I've handed you what's been</p> <p>25 marked as Exhibit Number 7, which is Bates stamped Fifth</p>
<p>Page 113</p> <p>1 FTAM and his leadership on the president circle trip.</p> <p>2 He is a great leader with a long runway at Fifth Third.</p> <p>3 Is that right?</p> <p>4 A. Absolutely correct.</p> <p>5 Q. Great year and I appreciate your partnership;</p> <p>6 is that correct?</p> <p>7 A. Yep, that's correct. All those comments were</p> <p>8 in reference to the job he was holding, which was not</p> <p>9 the CEO job; it was the line of business job in the</p> <p>10 organization. And this review supported why I promoted</p> <p>11 Phil up and offered him the top job in the company as</p> <p>12 the head of consumer bank, one of the top five jobs.</p> <p>13 (Exhibit 6 is marked for identification.)</p> <p>14 BY MR. SABA:</p> <p>15 Q. Mr. Carmichael, I've handed you what's been</p> <p>16 marked as Exhibit 6, Fifth Third McHugh 000701 through</p> <p>17 Fifth Third McHugh 000709. Can you identify that</p> <p>18 document for me, please?</p> <p>19 A. Looks like a 2012 leadership PM form for Phil</p> <p>20 R. McHugh.</p> <p>21 Q. This form was used for the annual review of,</p> <p>22 in this case, Phil McHugh at that time; is that right?</p> <p>23 A. That would be correct.</p> <p>24 Q. What was Phil McHugh's role at that time?</p> <p>25 A. Let me go through here and look at it. Head</p>	<p>Page 115</p> <p>1 Third McHugh 000732 through Fifth Third McHugh 000737.</p> <p>2 Can you identify that document for me, please?</p> <p>3 A. 2013 performance management for Phil McHugh,</p> <p>4 performance management form we used in 2013.</p> <p>5 Q. What position did Phil McHugh hold at that</p> <p>6 time?</p> <p>7 A. Head of wealth and asset management.</p> <p>8 Q. And would you have completed this review of</p> <p>9 Phil McHugh?</p> <p>10 A. Yes, I would have.</p> <p>11 Q. And you completed this in April of 2014; is</p> <p>12 that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And what were the results of Mr. McHugh's</p> <p>15 review for his performance in 2013?</p> <p>16 A. Good performance in this position. In the</p> <p>17 role that he was overseeing, he did a good job.</p> <p>18 Q. He was far above expectations; isn't that</p> <p>19 right?</p> <p>20 A. Yes, that's a good job.</p> <p>21 Q. Referring you to page 5 of 6, under team</p> <p>22 effectiveness. Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. Says far above expectations. And it</p> <p>25 references Phil's employee engagement; is that right?</p>

<p>Page 116</p> <p>1 A. Let me just take a look at this. Yes, I see 2 that.</p> <p>3 Q. What is "employee engagement"?</p> <p>4 A. Employee engagement is a process and 5 methodology in which we measure the engagement level of 6 an organization, and we typically engage a third party, 7 and we've had multiple third parties come in and do that 8 process for us and support that process for the bank, 9 and we typically do it annually, but that's not always 10 the case. Sometimes we'll do -- we'll skip a year or 11 something of that nature.</p> <p>12 Q. And under manager comments, those are your 13 comments, first of all; is that right? Your manager 14 comments?</p> <p>15 A. Yes, it is. I believe that's correct, because 16 I'm the manager.</p> <p>17 Q. The last line of your manager comments, it 18 says, please stay focused on improving EE, employee 19 engagement, in 2014; is that correct?</p> <p>20 A. That's what it says.</p> <p>21 Q. Why did you want Phil to stay focused on 22 improving employee engagement?</p> <p>23 A. I expect all my leaders every year -- and I 24 can't think of a reason -- why where we wouldn't have an 25 opportunity for our leaders to continue to elevate</p>	<p>Page 118</p> <p>1 it's just another data point of how we think about 2 elevating our work force, making sure we're looking at 3 every opportunity.</p> <p>4 Q. You mentioned it's important to improve 5 employee engagement and have employee engagement. Why 6 is it important?</p> <p>7 A. Well, by definition, the more engaged an 8 organization is, the better outcome you get as an 9 organization in general. But once again, at any point 10 in time, the organization that an individual might be 11 leading could be at a different phase or can be making 12 tough challenges -- tough decisions in that 13 organization. The organization could be going through a 14 transformation. And you could go with coming in; you 15 could be going out.</p> <p>16 So it's just something that we use as another 17 data point. But we like to see the scores continue to 18 go up, but that's not always a result of that manager's 19 or the executive's performance. There's a lot of 20 factors that could go into that engagement score. It's 21 just another data point, and we look at all that.</p> <p>22 Q. Clearly though, it's something a manager can 23 focus on improving; is that right?</p> <p>24 A. I think every manager can continue to find 25 opportunities. Once again, depends on what the</p>
<p>Page 117</p> <p>1 engagement scores in their line of business. Engagement 2 score looks at a lot of things. It looks at, you know, 3 communication, how things are getting down to the 4 organization, how people are receiving information, how 5 they feel about leadership. There's a lot of things 6 that go into that, so we always want to continue to 7 improve on employee engagement scores.</p> <p>8 Every organization has opportunities there; 9 every line of business has opportunities there. So it's 10 always something I always encourage my leaders to 11 continue to stay focused on because at the end of the 12 day, it's -- it's important that we have -- and we 13 continue to elevate engagement in the organization.</p> <p>14 Once again, it is at a point in time. The 15 organization can be at a very different state. There 16 could be a lot of changes going on in the organization. 17 So those -- those outcomes can ebb and flow 18 substantially with no respect or relationship to what 19 the manager might be doing. It could be a point in time 20 for the organization, what the organization's going 21 through, what the company's going through, that could 22 change those scores quite drastically.</p> <p>23 So it's -- they're data points. They're 24 helpful. Year after year, if you look at those data 25 points, there's trend opportunities. But once again,</p>	<p>Page 119</p> <p>1 engagement scores demonstrate. For instance, if -- if 2 the organization says they're not clear on 3 organizational strategy, well, there's something a 4 manager can work on to provide more clarity on 5 organizational strategies. So there's definitely 6 opportunities that come out of those discussions.</p> <p>7 Q. What can a manager typically do to improve 8 their employee engagement scores?</p> <p>9 A. I just gave you one example. So the -- of 10 communication, so the manager may elevate the amount of 11 communication he provides to his organization around 12 strategy, draw parallels of our strategy versus another 13 group's, and how they can support that strategy. Those 14 are examples of things that -- that might have shown up 15 on the viewpoint survey as an opportunity for 16 improvement.</p> <p>17 Q. Are those different types of coaching that a 18 manager can provide to the employees?</p> <p>19 A. Can you repeat the question?</p> <p>20 Q. Yeah, I'm asking are those different types of 21 coaching that a manager can provide to employees to help 22 improve employee engagement scores?</p> <p>23 A. There's opportunities. The word "coaching," 24 I'm not sure that I would use the word coaching. 25 There's opportunities for that leader to -- to put in</p>

<p style="text-align: right;">Page 120</p> <p>1 processes such as communication processes, enhanced</p> <p>2 communication processes. There's educational</p> <p>3 opportunities that a manager can bring forth. I</p> <p>4 wouldn't use the word necessarily coaching.</p> <p>5 (Exhibit 8 is marked for identification.)</p> <p>6 BY MR. SABA:</p> <p>7 Q. Mr. Carmichael, I've handed you what's marked</p> <p>8 as Exhibit Number 8, Fifth Third McHugh 000758 through</p> <p>9 Fifth Third McHugh 000763. Can you identify this for</p> <p>10 me, please?</p> <p>11 A. 2014 performance management for Phil McHugh.</p> <p>12 Q. And what was Phil McHugh's position at this</p> <p>13 point in time?</p> <p>14 A. Same as prior year, head of wealth and asset</p> <p>15 management.</p> <p>16 Q. And you were serving as his manager at this</p> <p>17 time; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. And you would have completed Exhibit 8; is</p> <p>20 that right?</p> <p>21 A. Correct.</p> <p>22 Q. And you completed this on February 25, 2015;</p> <p>23 is that right?</p> <p>24 A. Correct.</p> <p>25 Q. And how was Phil McHugh's performance in 2014?</p>	<p style="text-align: right;">Page 122</p> <p>1 for the company and given further opportunities for --</p> <p>2 for a promotion.</p> <p>3 Q. But your comments would indicate Phil was</p> <p>4 actually doing a great job; is that right?</p> <p>5 A. All my leaders do a great job in the</p> <p>6 organization to reach the levels that they are. They're</p> <p>7 good managers. They do well. They can run the</p> <p>8 operation I'm asking them to run. They're good</p> <p>9 performers, and if he wasn't a good performer, he</p> <p>10 wouldn't have been asked to take a promotion to be</p> <p>11 the top five guy in the proxy -- one of the guys in the</p> <p>12 proxy, top five positions in the company. So Phil was</p> <p>13 doing a good job in this role that I asked him to</p> <p>14 fulfill. It's not the CEO role. It has very different</p> <p>15 skills and requirements. In this role, he did a very</p> <p>16 good job, yes. Yes. That's what this review would</p> <p>17 reflect.</p> <p>18 Q. And I'm just referring to your comments. You</p> <p>19 actually used the word "great," not just good; is that</p> <p>20 right?</p> <p>21 A. Yeah. In this role, okay -- which was not a</p> <p>22 top role in the company -- he had very good -- great</p> <p>23 performance in this role, which I expect my managers to</p> <p>24 have at this level.</p> <p>25 (Exhibit 9 is marked for identification.)</p>
<p style="text-align: right;">Page 121</p> <p>1 A. Strong performance review calculated out to a</p> <p>2 3.75 in this case.</p> <p>3 Q. On what page are you looking?</p> <p>4 A. Page 4 of 6. So it looks like his rating went</p> <p>5 down from the prior year.</p> <p>6 Q. His overall rating was far above expectations,</p> <p>7 correct?</p> <p>8 A. This form switches pages, so bear with me. I</p> <p>9 thought I was looking at the rating summary, which was</p> <p>10 calculated at 3.75.</p> <p>11 Q. Then the overall rating is a 5, "far above</p> <p>12 expectations"; is that right?</p> <p>13 A. These forms change a little bit year to year;</p> <p>14 I just got to see how they're doing this one. I've got</p> <p>15 rating summary. Okay, that must have been the rating</p> <p>16 summary -- I mean, listen, the overall rating was -- was</p> <p>17 -- was -- calculated at 3.7 in a rating of 5. That</p> <p>18 seems inconsistent. I have to study this form a little</p> <p>19 bit to see where that inconsistency's coming from.</p> <p>20 But this -- strong performance. I can go</p> <p>21 through and read these summaries, but I know Phil was</p> <p>22 doing a good job for us at that time, and I have no</p> <p>23 doubt he had a good performance review. In this -- in</p> <p>24 this role, what I was asking him to do, he would have</p> <p>25 done a good job, and that's why he was asked to do more</p>	<p style="text-align: right;">Page 123</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Carmichael, I've handed you what's been</p> <p>3 marked as Exhibit Number 9, Fifth Third McHugh 006552</p> <p>4 through Fifth Third McHugh 006554. Can you identify</p> <p>5 this document for me, please?</p> <p>6 A. Looks like an enterprise DDI competencies in</p> <p>7 the October 2015 timeframe.</p> <p>8 Q. Do you know what the enterprise DDI</p> <p>9 competencies is referring to?</p> <p>10 A. We had -- it's the skill competency matrix</p> <p>11 that I'm not -- we've used it -- obviously, we used it</p> <p>12 once. I'm not -- I'm not really strong with that tool.</p> <p>13 This was facilitated by the HR organization; they</p> <p>14 administered it. This wasn't something I was closely</p> <p>15 involved with, to be honest with you.</p> <p>16 But I am familiar with what they were -- they</p> <p>17 were trying to do here, I believe, assessing strengths</p> <p>18 and weaknesses of an individual, and they used a tool</p> <p>19 called, I believe, DDI. That's all I know about it.</p> <p>20 Q. What does DDI refer to?</p> <p>21 A. I don't know. I couldn't tell you what the</p> <p>22 acronym is.</p> <p>23 Q. And when you say "the HR organization," who</p> <p>24 are you referring to?</p> <p>25 A. 2015, it would have been -- this was probably</p>

<p>Page 124</p> <p>1 Theresa Tanner at the time at 2015.</p> <p>2 Q. So by the HR organization, you're referring to</p> <p>3 in-house at Fifth Third, not an outside source?</p> <p>4 A. I don't recall. I don't recall this tool and</p> <p>5 how it was -- who brought it forth, but it would come</p> <p>6 through and been facilitated by the HR department that</p> <p>7 Theresa Tanner led. I know no more than that about this</p> <p>8 form.</p> <p>9 Q. Do you know if it's assessing enterprise</p> <p>10 leaders for the qualifications to serve as CEO?</p> <p>11 A. I'm not familiar with this. To be honest with</p> <p>12 you, I do not recognize this -- this -- it was eight</p> <p>13 years ago. I don't recognize and don't recall this</p> <p>14 page, this deck at all. So I'm really not sure and I</p> <p>15 can't answer that question with any level of confidence.</p> <p>16 Q. Have you seen this document before?</p> <p>17 A. I don't recall ever seeing this document.</p> <p>18 (Exhibit 10 is marked for identification.)</p> <p>19 BY MR. SABA:</p> <p>20 Q. Mr. Carmichael, I've handed you what's been</p> <p>21 marked as Exhibit Number 10, Fifth Third McHugh 0006555</p> <p>22 through Fifth Third McHugh 0006562. Can you identify</p> <p>23 this document for me, please?</p> <p>24 A. It says succession discussion confidential.</p> <p>25 Q. Have you seen this document before?</p>	<p>Page 126</p> <p>1 never seen this document before, and objection to</p> <p>2 the representation that the messaging has anything</p> <p>3 to do with the succession timeline. But you can</p> <p>4 answer, if you know.</p> <p>5 THE WITNESS: I have no clue; I've never seen</p> <p>6 this document before. I was not involved in this</p> <p>7 process.</p> <p>8 BY MR. SABA:</p> <p>9 Q. You said you were never involved in the</p> <p>10 process. You were in --</p> <p>11 A. This document. Referring to that document.</p> <p>12 Q. Okay.</p> <p>13 A. The process.</p> <p>14 Q. The process of becoming CEO. You're the one</p> <p>15 that succeeded Kevin Kabat as CEO, right?</p> <p>16 A. I was informed that the board was undertaking</p> <p>17 the process. I'm not familiar with this succession plan</p> <p>18 document, is what I was referring to. I've never</p> <p>19 seen -- I would not have seen that document.</p> <p>20 Q. You were not involved in putting this document</p> <p>21 together?</p> <p>22 A. I just said I didn't see the document, so</p> <p>23 obviously I wasn't involved.</p> <p>24 Q. Do you know who would have put Exhibit 10</p> <p>25 together?</p>
<p>Page 125</p> <p>1 A. I do not recall ever seeing this document. I</p> <p>2 don't recall seeing it. Doesn't mean I never saw it. I</p> <p>3 do not recall seeing this document.</p> <p>4 Q. Do you know what it's referring to?</p> <p>5 A. I have no -- I've got to look through this.</p> <p>6 MR. CIOFFI: Take your time. Look at it.</p> <p>7 THE WITNESS: This looks like some succession</p> <p>8 management timeline for the prior CEO and different</p> <p>9 scenarios. I absolutely can't recall ever seeing</p> <p>10 that document.</p> <p>11 BY MR. SABA:</p> <p>12 Q. The document makes several references to</p> <p>13 "Kevin." Is that Kevin Kabat?</p> <p>14 A. I would imagine so, since he was the CEO at</p> <p>15 the time, and I think that's what we're talking about</p> <p>16 here.</p> <p>17 Q. Referring to page 6 of this document, Fifth</p> <p>18 Third McHugh 006560. It talks about, in the box,</p> <p>19 personal challenges for accelerated timeline. And under</p> <p>20 messaging, age matters. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Can you explain to me -- do you know why age</p> <p>23 matters with respect to this timeline for CEO</p> <p>24 succession?</p> <p>25 MR. CIOFFI: Objection. He's testified he's</p>	<p>Page 127</p> <p>1 A. I don't know exactly who put that together. I</p> <p>2 would assume HR, working with the union capital</p> <p>3 committee, would have been involved in that type of</p> <p>4 process. I do not know. I did not put it together.</p> <p>5 I've never seen it.</p> <p>6 (Exhibit 11 is marked for identification.)</p> <p>7 BY MR. SABA:</p> <p>8 Q. Mr. Carmichael, I've handed you what's been</p> <p>9 marked as Exhibit Number 11, Fifth Third McHugh 000766</p> <p>10 through Fifth Third McHugh 000773. Can you identify</p> <p>11 this document for me, please?</p> <p>12 A. 2015 performance management form for Phil</p> <p>13 McHugh.</p> <p>14 Q. And you were not Mr. McHugh's manager for</p> <p>15 2015; is that correct?</p> <p>16 A. When this form was done -- I've got to recall</p> <p>17 how the organization flowed at this point -- when this</p> <p>18 form was done, it says here the manager at the time was</p> <p>19 Lars Anderson, who would have been the chief operating</p> <p>20 officer at that time in this position, then he would</p> <p>21 have reported to the chief operating officer, it</p> <p>22 appears, according to this form, which I suspect is</p> <p>23 correct.</p> <p>24 Q. And what was Phil McHugh's position at</p> <p>25 that time?</p>

<p>Page 128</p> <p>1 A. Head of investment advisors.</p> <p>2 Q. Referring you back to Exhibit 8, which is the</p> <p>3 2014 performance review, his title at that time says</p> <p>4 head of wealth and asset management. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Did his position change from 2014 to 2015?</p> <p>7 A. I don't recall his position changing. I think</p> <p>8 we renamed -- we're changing the name of the division</p> <p>9 itself. I'm not a -- it used to be the IA division,</p> <p>10 then we shifted to wealth and asset management. It was</p> <p>11 basically a naming -- a line of business name change is</p> <p>12 what I think we have here. I just can't recall exactly</p> <p>13 the sequence and timings of these changes. But I don't</p> <p>14 believe the job was any different.</p> <p>15 Q. Would Mr. Anderson have reported to you at</p> <p>16 this point in time?</p> <p>17 A. He would have.</p> <p>18 Q. Have you seen Exhibit 11 before?</p> <p>19 A. I don't recall seeing this performance review.</p> <p>20 It was done by Lars Anderson, so I would not have -- I</p> <p>21 would not be expected to see this. I don't believe I</p> <p>22 have. I don't recall it.</p> <p>23 Q. As part of your role of being the supervisor</p> <p>24 to Lars Anderson, he would not have provided this to</p> <p>25 you?</p>	<p>Page 130</p> <p>1 itself.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Do you see that, Mr. Carmichael?</p> <p>4 A. That's correct.</p> <p>5 (Exhibit 12 is marked for identification.)</p> <p>6 BY MR. SABA:</p> <p>7 Q. Mr. Carmichael, I've handed you what's been</p> <p>8 marked as Exhibit Number 12, Fifth Third McHugh 000784</p> <p>9 through Fifth Third McHugh 000791. Can you identify</p> <p>10 that document for me, please?</p> <p>11 A. According to the form, it's 2016 performance</p> <p>12 management for Phil McHugh.</p> <p>13 Q. And what was Phil McHugh's position at that</p> <p>14 time?</p> <p>15 A. Head of wealth and asset management.</p> <p>16 Q. And his manager was still Lars Anderson; is</p> <p>17 that correct?</p> <p>18 A. That's what the form says.</p> <p>19 Q. It also indicates that Frank Forrest</p> <p>20 participated in the review; do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you know why Frank Forrest would have</p> <p>23 participated in the review back in 2016, of Phil McHugh?</p> <p>24 A. At this time, I believe we introduced risk</p> <p>25 ratings that were -- that had to be independently done</p>
<p>Page 129</p> <p>1 A. No, he would not have.</p> <p>2 Q. In 2015, you said Lars Anderson was COO; is</p> <p>3 that right?</p> <p>4 A. I believe that's correct.</p> <p>5 Q. Was he also in charge of the regions?</p> <p>6 A. I believe when he came in he had the regions</p> <p>7 reporting to him. I believe that. I'm not positive,</p> <p>8 but I believe that was the case. But I'm not -- I can't</p> <p>9 be a hundred percent factual about that.</p> <p>10 Q. Was he also included in the proxy that year?</p> <p>11 A. That year, 2015, I'm not sure if he was in</p> <p>12 there in 2015 or 2016, when he actually became in the --</p> <p>13 when he actually entered the proxy, I'm not sure if it</p> <p>14 was a 2015 proxy or 2016.</p> <p>15 Q. Are you able to determine how Phil did in</p> <p>16 2015, from Exhibit 11?</p> <p>17 MR. CIOFFI: Objection. The document speaks</p> <p>18 for itself. It's not a proper question to ask him</p> <p>19 to read the documents and say what it says. It</p> <p>20 says what it says.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Referring to page 2 of 6, it indicates an</p> <p>23 overall rating again of exceeds expectations; is that</p> <p>24 right?</p> <p>25 MR. CIOFFI: Objection. Document speaks for</p>	<p>Page 131</p> <p>1 by the chief risk and compliance officer, which at the</p> <p>2 time was Frank Forrest. And Frank's responsibility</p> <p>3 would be to assess the manager with respect to risk</p> <p>4 competencies and managing and overseeing risks in the</p> <p>5 area of responsibility that that individual had. There</p> <p>6 was a form and a process that Frank went through to do</p> <p>7 that. It was done independent of the manager, which</p> <p>8 would have been Lars Anderson, and it was part of the</p> <p>9 final review.</p> <p>10 Q. And what was Lars Anderson's position at this</p> <p>11 point in time in 2016?</p> <p>12 A. I believe he was still chief operating</p> <p>13 officer, but I believe that to be correct, but I've got</p> <p>14 to look at the data. But I'm pretty sure it was still</p> <p>15 chief operating officer.</p> <p>16 Q. And referring to the last page, Fifth Third</p> <p>17 McHugh 000791, Phil McHugh's review for 2016 would</p> <p>18 indicate, again, that he exceeds expectation; is that</p> <p>19 correct?</p> <p>20 MR. CIOFFI: Objection. The document speaks</p> <p>21 for itself. You don't have to have him read it.</p> <p>22 THE WITNESS: Says exceeds, and it says</p> <p>23 calculated raise ebb and flowed for Phil for the</p> <p>24 last three-plus years in his position. And once</p> <p>25 again, it demonstrates he's done a good job and</p>

<p>1 he's been in his role for a while, and he does a</p> <p>2 good job at performing in this role and meeting</p> <p>3 expectations of his role in the company.</p> <p>4 (Exhibit 13 is marked for identification.)</p> <p>5 BY MR. SABA:</p> <p>6 Q. Mr. Carmichael, I've handed you what's marked</p> <p>7 as Exhibit Number 13, Fifth Third McHugh 000823 through</p> <p>8 Fifth Third McHugh 000830. Can you identify that</p> <p>9 document for me, please?</p> <p>10 A. 2017 performance management of Phil McHugh.</p> <p>11 Q. And you were the person who performed this</p> <p>12 review of Phil McHugh for 2017; isn't that right?</p> <p>13 A. That's correct.</p> <p>14 Q. What was your position with the bank at that</p> <p>15 point in time?</p> <p>16 A. I would have been the CEO and president of the</p> <p>17 company.</p> <p>18 Q. And why did Phil -- and Phil McHugh was</p> <p>19 reporting directly to you; is that correct?</p> <p>20 A. At this point in time, yes.</p> <p>21 Q. Why was Phil McHugh switched to reporting</p> <p>22 directly to you instead of to Lars Anderson?</p> <p>23 A. Because I felt that was the best structure for</p> <p>24 the organization for optimal performance. It's a</p> <p>25 decision I had responsibility to make, and I believe</p>	<p>Page 132</p> <p>1 Q. And is that the same investigation by the CFPB</p> <p>2 that continues today?</p> <p>3 A. That -- the investigation -- there's a suit</p> <p>4 that was filed by the CFPB that we have addressed, and</p> <p>5 continue to address, that's still -- that's still</p> <p>6 active, it's not been settled.</p> <p>7 Q. Why is that being brought up in Phil McHugh's</p> <p>8 review?</p> <p>9 A. Because wealth and asset management has sales</p> <p>10 practice-related activities in wealth and asset</p> <p>11 management at this point in time, as this -- CFPB is</p> <p>12 starting their process of evaluating our sales practices</p> <p>13 and identifying review of that area. So he would be</p> <p>14 involved from that perspective.</p> <p>15 There's also, now that he has responsibilities</p> <p>16 for the region, the overall sales practices, to make</p> <p>17 sure the regions are plugged into those appropriate</p> <p>18 practices, so -- because of his roles, regional banking</p> <p>19 oversight and responsibilities, and WAM, has sales</p> <p>20 practice-related. In business banking, there's a fine</p> <p>21 line there. A lot of times as a consumer -- he has his</p> <p>22 own company, so we want to make sure all those are</p> <p>23 covered. So that's why he would have been involved.</p> <p>24 Q. And he was -- just to be clear, you referenced</p> <p>25 business banking. He was the head of the consumer bank</p>
<p>Page 133</p> <p>1 that having that role and breaking it out from a chief</p> <p>2 operating officer role was a better way to run the</p> <p>3 group, so I changed reporting structure and it appears,</p> <p>4 at that time, Phil was also asked to step up and add the</p> <p>5 regional banking group, which is regional banks.</p> <p>6 Q. And that was added to his duties as head of</p> <p>7 wealth and asset management; is that right?</p> <p>8 A. Yeah, I think he also picked up business</p> <p>9 banking at that time. Once again, another nice</p> <p>10 promotion to a bigger role in the company for Phil</p> <p>11 McHugh.</p> <p>12 Q. And what was your overall ranking for Phil</p> <p>13 McHugh that year?</p> <p>14 A. Calculated out to 3.8, which was exceeds</p> <p>15 expectations.</p> <p>16 Q. If you could turn to page 6 of 7, Fifth Third</p> <p>17 McHugh 000828. What does the last paragraph on that</p> <p>18 page refer to?</p> <p>19 A. It refers to the CFPB kicking off a sales</p> <p>20 practice, our sales practices, and it also talks about</p> <p>21 other actions and work that the teams are doing to</p> <p>22 continue to elevate our performance and controls around</p> <p>23 sales practices, something that's extremely important</p> <p>24 that we take very seriously, so this was more of that</p> <p>25 continued effort.</p>	<p>Page 134</p> <p>1 at this point; is that correct?</p> <p>2 A. That's not what it says. Head of regional</p> <p>3 banking, WAM, and business banking, but I believe -- but</p> <p>4 -- yeah, that's what this says.</p> <p>5 Q. Okay. If I can refer you to --</p> <p>6 A. I'm looking at the strategic --</p> <p>7 Q. If I can refer to your comments on Fifth Third</p> <p>8 McHugh 000830.</p> <p>9 A. Okay.</p> <p>10 Q. If you look at the second paragraph -- first</p> <p>11 of all, do you recognize that these are your notes that</p> <p>12 you put on here?</p> <p>13 A. These would have been my notes. I'm just</p> <p>14 trying to draw the disconnect between his title and the</p> <p>15 head of the consumer bank, and I want to know if this --</p> <p>16 if there's a mid-year transition where he was moved over</p> <p>17 to head of the consumer bank. So I'm just a little</p> <p>18 confused by this, so once again, I just got this handed</p> <p>19 to me. But if he's leading the consumer bank at this</p> <p>20 time, then obviously the sales practice issue was very</p> <p>21 consumer-focused. It was a hundred percent</p> <p>22 consumer-focused. And if he had responsibility for the</p> <p>23 consumer bank, he would have been engaged in that -- in</p> <p>24 that process and review of the CFPB, and he also would</p> <p>25 have had some responsibilities to continue to elevate</p>

<p>1 our sales practice activities in the bank and make sure 2 we continue to do a better job in that area wherever 3 possible. 4 Q. So as one point of clarification, in your 5 second paragraph of notes on page Fifth Third McHugh 6 000830, you indicate Phil recently took over leadership 7 of the consumer business. He's done a nice job of 8 addressing challenges, achieving this year's financial 9 plan, and setting the stage for a successful 2018. Phil 10 does a nice job with the regulators representing his 11 business, communicating effectively, and addressing any 12 outstanding issues. 13 Do you see that? 14 A. I do. 15 Q. So does that refresh your recollection of him 16 taking over the consumer bank? 17 A. My guess is it happened midyear or near the 18 end of the year. I don't know. But my guess is he 19 started off as the head of the regional banking and WAM, 20 and then took over the head of the consumer. I don't 21 know -- I don't recall exactly the timelines and how 22 this transpired. I was just confused by the title 23 versus the comments about the consumer banking. He 24 obviously took over the consumer banking that year. 25 Q. The assignment for him to take over the</p>	<p>Page 136</p> <p>1 job was much bigger, and it was, therefore, became -- 2 because of the amount of revenue that was directly -- 3 directly attributed to that line of business. Not the 4 regions but the line of business, which was about 5 60-plus percent of the gross revenue, that was a job 6 that Phil was being offered at that time, different than 7 the one that he had prior. 8 Q. Is it fair to say that the consumer bank role 9 in 2020 was a far more important role than the consumer 10 bank role was in 2017? 11 A. It was a -- it was a larger line of business. 12 Therefore, it had more revenue, responsibilities, which 13 obviously means importance to the company because 14 obviously that's what we're in business to do, serve our 15 customers, center revenues and returns for our 16 shareholders. So it had a much bigger financial 17 responsibility to the corporation. So yes. 18 Q. Can you read to me your first paragraph on 19 Fifth Third McHugh 000830? 20 MR. CIOFFI: Objection. Document speaks for 21 itself. You may answer. 22 THE WITNESS: Phil was a long season employee 23 that understands our business and is deeply 24 committed to the success of Fifth Third. Always 25 does what is in the best interest of the company to</p> <p>Page 138</p>
<p>1 consumer banking, that's something you would have given 2 him, correct? 3 A. I absolutely would have given him that 4 opportunity, yes. 5 Q. And this is the same consumer bank that you 6 were offering to him in 2020, October; is that correct? 7 A. No, that's not correct. 8 Q. Why is that incorrect? 9 A. I'll explain it to you. The consumer bank in 10 2020 had a much larger scope, had over 60 percent of the 11 revenue of the company. The consumer bank during this 12 period of time did not have Fifth Third securities, 13 which is our brokerage business. It did not have MB 14 Financial, which was a substantial -- largest 15 acquisition in the history -- maybe -- probably the 16 largest acquisition. Old Kent may have been about the 17 same size -- been right up there with Old Kent. That 18 made us the second largest consumer bank in Chicago, 19 which was huge and very important to us. A tremendous 20 southeast expansion where we were building hundreds of 21 branches in those markets. Very important markets for 22 us that we didn't have when he had it prior. We 23 elevated that strategy. 24 Then the consumer credit card business wasn't 25 reporting into the consumer bank at this time. So the</p> <p>Page 137</p>	<p>1 achieve outcomes in the right way. Phil takes full 2 accountability for his organization. Never makes 3 excuses or distributes blame. He is a great leader 4 for his people and is always there to assist them 5 in their success. Phil is the epitome of a team 6 player and collaborates with all of his business 7 partners and appropriately addresses challenges. 8 BY MR. SABA: 9 Q. You wrote that, correct? 10 A. Yes, I did. 11 Q. Can you read the last paragraph for me, 12 please? 13 MR. CIOFFI: Same objection. Go ahead. 14 THE WITNESS: Phil approaches everything with 15 the highest integrity and fully assesses the risk 16 in every decision. He partners well with the risk 17 and compliance groups to ensure decisions are 18 consistent with our risk appetite. Phil operates 19 in a very collaborative manner with his peers and 20 lives our core values. 21 BY MR. SABA: 22 Q. What are Fifth Third's core values? 23 A. They're stated in the document numerous times 24 through all these performance reviews. We can go to 25 them and I can read them to you, if you'd like.</p> <p>Page 139</p>

<p>Page 140</p> <p>1 Q. Certainly.</p> <p>2 A. Accountability. Customer experience.</p> <p>3 Employee engagement. Then the core values: Work as one</p> <p>4 bank, take accountability, be respectful and inclusive,</p> <p>5 act with integrity.</p> <p>6 (Exhibit 14 is marked for identification.)</p> <p>7 BY MR. SABA:</p> <p>8 Q. Mr. Carmichael, I've handed you what's been</p> <p>9 marked as Exhibit Number 14, Fifth Third McHugh 000836</p> <p>10 through Fifth Third McHugh 000840. Can you identify</p> <p>11 this document for me, please?</p> <p>12 A. It says 2018 performance management for Phil</p> <p>13 McHugh.</p> <p>14 Q. Have you seen this document before?</p> <p>15 A. It would be his performance review that I</p> <p>16 signed.</p> <p>17 Q. You were still his manager at this point in</p> <p>18 time?</p> <p>19 A. Apparently so. If I've signed this, I was his</p> <p>20 manager.</p> <p>21 Q. And what was Phil McHugh's position in 2018?</p> <p>22 A. I'm reading this right now. Phil recently</p> <p>23 took over the leash of the regions, so he had that</p> <p>24 responsibility reporting in 2018. So he had taken over</p> <p>25 the regions. He also provided leadership over our</p>	<p>Page 142</p> <p>1 Fifth Third, absolutely. I believe he always tried to</p> <p>2 do what was in the best interest of the company,</p> <p>3 absolutely. And he was a very accountable leader,</p> <p>4 that's why he was a good leader for the organization,</p> <p>5 that's why he was promoted, and that's why he was paid</p> <p>6 substantially for his services to the company.</p> <p>7 Q. In the second paragraph, where you mention</p> <p>8 where he recently took over leadership of the regions,</p> <p>9 you note in the last sentence, and he has ensured the</p> <p>10 appropriate expectations are in place to position the</p> <p>11 regions for success in 2019; is that right?</p> <p>12 A. That's what it says.</p> <p>13 Q. With respect to the regions, you were also</p> <p>14 responsible for the regions before you took over the</p> <p>15 role of president and CEO; is that correct?</p> <p>16 A. I was.</p> <p>17 Q. In fact, it's responsibilities for the</p> <p>18 regions, you wanted Tim Spence to be responsible for the</p> <p>19 regions so he could get some experience doing that for</p> <p>20 the role of president; isn't that right?</p> <p>21 A. The board decided it was their decision to</p> <p>22 promote Tim Spence to president of the bank. When you</p> <p>23 have a president in place, the logical -- the logical</p> <p>24 structure, when it's in that president, separate from</p> <p>25 the CEO, is that the regions, as presidents themselves</p>
<p>Page 141</p> <p>1 president's circle, and then, if the title on this is</p> <p>2 right, he still had responsibilities for wealth and</p> <p>3 asset management in business banking.</p> <p>4 Q. Were you able to determine, with respect to</p> <p>5 that reference, or does it refresh your recollection as</p> <p>6 to whether or not Phil also took over leadership of the</p> <p>7 Cincinnati region in 2018?</p> <p>8 A. I'm not sure -- it does not. I don't have</p> <p>9 clarity as to when the Cincinnati region was no longer</p> <p>10 an enterprise position directly and then came underneath</p> <p>11 the region. I don't have the exact timeframe</p> <p>12 crystallized in my head when that occurred. It wouldn't</p> <p>13 have been too far off this time. I just don't know</p> <p>14 exactly when.</p> <p>15 Q. And you would have filled out these comments</p> <p>16 we see on the first page of Exhibit Number 14; is that</p> <p>17 right?</p> <p>18 A. I would have wrote this, correct.</p> <p>19 Q. And looking at this document, it appears you</p> <p>20 repeated the first paragraph from 2017; is that correct?</p> <p>21 A. Apparently so.</p> <p>22 Q. And you still -- you still believe that to be</p> <p>23 true for 2018 as well; is that right?</p> <p>24 A. In the job that Phil was doing, understanding</p> <p>25 our business and deeply committed to the success of</p>	<p>Page 143</p> <p>1 are reporting to the president when it's a separate</p> <p>2 role.</p> <p>3 So that's the change we made. In that case,</p> <p>4 also, as I mentioned before, it's more of an oversight</p> <p>5 responsibility and role for the organization, the</p> <p>6 regional leader is. All right? If you go back through</p> <p>7 my career, that regional position reported to numerous</p> <p>8 executives over time, because it's administrative in</p> <p>9 nature. There was guides, coaching, the performance</p> <p>10 reviews, those types of things. We had five different</p> <p>11 people performing that role.</p> <p>12 So I use it for -- as a rotational development</p> <p>13 role for all leaders. I used it for Phil, when I gave</p> <p>14 Phil that opportunity. I gave Phil that opportunity.</p> <p>15 We took it away from somebody else. So is it an</p> <p>16 opportunity that continues to develop, to enhance their</p> <p>17 skills, to get to know the organization better?</p> <p>18 Absolutely.</p> <p>19 Was there an opportunity for Tim to have that</p> <p>20 role and elevate his experience level in the regions and</p> <p>21 oversight of the regions? Absolutely. And that was the</p> <p>22 decision that was made by myself, supported by the</p> <p>23 board, as he became president.</p> <p>24 Q. In the third paragraph, you indicate, Phil</p> <p>25 does a great job of proactively managing regulatory</p>

<p>Page 144</p> <p>1 considerations and potential concerns. He does a nice 2 job of leading his teams' engagement in such matters to 3 achieve positive outcomes. 4 What is that referring to? 5 A. Refers that all my leaders are expected to do 6 a good job in managing the regulatory processes, be 7 responsive to the regulatory environment, be responsive 8 to the regulatory request, being responsive to 9 completing regulatory actions MRAs, such as MRIs in 10 their organization. You don't get to become a leader in 11 this organization at the highest level without being 12 good in this space and doing a nice job. That's the way 13 the banking sector works because of the highly 14 regulatory environment we are. 15 I was pointing out here that he does a very 16 good job, as all my leaders do, in running their lines 17 of business and areas of responsibility. I was 18 acknowledging that. 19 Q. In the fourth full paragraph, you talk about 20 Phil does a great job of providing outstanding executive 21 leadership to many corporate activities and events and 22 normally assumes such leadership responsibilities. One 23 significant example is the president circle, which 24 recognizes the top performers in our sales force. Phil 25 does a great job at leading such events to ensure they</p>	<p>Page 146</p> <p>1 there's been multiple leaders over the years that have 2 done that. Phil stepped in, raised his hand. Greatly 3 appreciated that to lead the president circle. He did a 4 very nice job leading the president circle. 5 Q. How long was Phil in the role of leading the 6 president's circle event? 7 A. I don't know off the top of my head, but 8 multiple years. That job requires, you know, future 9 planning on the site location, entertainment that we're 10 going to have, working with the third party that puts 11 that together for us, potentially previewing the venue 12 if necessary. But he did that for multiple years for 13 us. It's a role that we want our top -- one of our top 14 executives to have and provide that leadership. So I 15 think at least two, maybe three years he did that for 16 us. 17 Q. Under the how section, you repeat some of the 18 sentences that you had from 2017. But you also add, 19 Phil is our most tenured executive and brings deep 20 historical knowledge to all of our key decisions to 21 ensure prior learnings and results are appropriately 22 considered. Do you see that? 23 A. I do. 24 Q. What did you mean by that? 25 A. Exactly what it says, that Phil was our -- you</p>
<p>Page 145</p> <p>1 achieve the best outcomes and positively impacts our 2 employees. 3 Do you see that? 4 A. I do. 5 Q. What are you talking about, the president's 6 circle? 7 A. This was -- this was an event that recognizes 8 and rewards our top performers in the company more on 9 the consumer types of businesses than the commercial 10 business. But we did expand over the years to bring 11 more commercial people involved. It was typically a 12 recognition for -- to think about the retail CSRs, 13 people that work in the retail branch. It would be 14 mortgage loan officers, those kind of individuals. 15 The individuals that don't make a substantial amount of 16 money. This is a great way to recognize our top 17 performers in that area. We view it as money very well 18 spent, to recognize those leaders. 19 So it's top performers more in the consumer 20 businesses, some entry into the commercial side over 21 time. It was a rewards trip where we took them and 22 their significant other and we recognized them at a 23 formal event. Typically, you know, out of state, out of 24 country. We had a nice venue. It's a very nice event 25 to recognize and reward them. I've had multiple --</p>	<p>Page 147</p> <p>1 know, most tenured executive. He has been with the 2 company 30-something years. There's no executive on the 3 floor that has that tenure, that I'm aware of, in the 4 organization. 5 So he has deep history -- deep knowledge of 6 the operations of the company. All right? And I 7 believe every member of the team contributes to the 8 success of the team. Phil had a very good perspective 9 on historical events, the bank as it evolved, the areas 10 of operations of the bank itself, the lines of -- good 11 command of lines of businesses. He was a very good 12 tactical leader that could execute in the job he was in, 13 given the assignments that he was given, that he could 14 execute well. All right? 15 This is all about historical perspective. 16 It's about understanding the organization. It's not 17 about future leadership, it's not about the CEO role, 18 it's not about the requirements that a CEO would have to 19 have to be successful moving the corporation forward in 20 a very digital world, but historical, keeping the lights 21 on, executing well against the objectives of the 22 organization. He's very good at that. 23 Q. Under the opportunities for 2019, there are 24 four listed. The first is continue to deepen knowledge 25 of the regions and our talent to support the success in</p>

<p>Page 148</p> <p>1 each of our various markets in the most impactful 2 manner.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. What did you mean by that?</p> <p>6 A. You have administrative support for the 7 regions and oversight of the regions. You're expected 8 to continue to make sure that the key jobs and 9 responsibilities are being met in your organization. So 10 we have turnover. You know, the presidents in the 11 markets or the line of business heads in most cases are 12 responsible for -- depending on what role it was -- are 13 responsible for making sure the position gets filled.</p> <p>14 But as the administrator, oversight of the 15 regions, it's something that Phil also has to keep 16 making sure he's on top of, encouraging the leadership 17 to get those roles filled and so forth. So just making 18 sure we have the right talent in the organization and be 19 part of that decision and work with the people 20 responsible for filling those jobs. That's just part of 21 the administrative role of the regional president. It 22 doesn't fully -- isn't fully responsible for every role 23 out there or filling every role, but, you know, 24 oversight as an administrator of the regional 25 presidents, it's part of what I would expect to know,</p>	<p>Page 150</p> <p>1 expense synergies as defined by the MB integration plan. 2 Also ensure the adoption of the MB Financial business 3 banking model in Chicago is successful, and identify, if 4 appropriate, opportunities to make similar modifications 5 in other regions.</p> <p>6 What did you mean by that?</p> <p>7 A. As it states, basically as the head of the 8 regions, and have an oversight responsibility for the 9 regions. We are bringing in a very large acquisition in 10 the Chicago region. So a natural responsibility of the 11 individual that has oversight for the regions to make 12 sure that integration goes as smoothly as possible. He 13 didn't have the sole responsibility, the only 14 responsibility for doing that integration. He didn't 15 have sole responsibility for every task and every line 16 of business to integrate it, but he had oversight.</p> <p>17 We run a major organization, and because he 18 was a regional leader at the time of all the regions, 19 and we did an acquisition of the region, I asked him to 20 make sure he had his eyes and ears open to provide and 21 help us be successful in integrating that transaction.</p> <p>22 Q. Who else was responsible for the integration 23 of MB Financial?</p> <p>24 A. Well, I believe Charlie Bradley was the main 25 person on point as the program office. We had a program</p>
<p>Page 149</p> <p>1 have oversight of.</p> <p>2 Q. The second bullet point reads be very visible 3 to our clients and appropriately support client 4 acquisition in our markets.</p> <p>5 What did you mean by that?</p> <p>6 A. Yeah, when -- where appropriate, they need a 7 representative from corporate, or we're trying to bring 8 in a new client or new opportunity to the bank and it's 9 helpful to have someone from the corporate office to 10 show strength and also show breadth of our -- of our 11 banking capabilities and the scale of our organizations.</p> <p>12 The regional presidents, oftentimes myself as 13 president or chief operating officer, we would go into 14 those markets and help those regional presidents 15 themselves acquire relationships. I held that -- I kept 16 that responsibility and expected that responsibility of 17 all my executives. As a CIO, I would go into the market 18 and help with a client acquisition opportunity if it was 19 more of a technology-related client.</p> <p>20 So you know, as the oversight of the region, 21 that's one of Phil's responsibilities. Going in and 22 helping where appropriate is very logical and beneficial 23 to the corporation.</p> <p>24 Q. The next bullet point reads, ensure the smooth 25 integration of MB Financial and realize the revenue and</p>	<p>Page 151</p> <p>1 office set up to manage the integration of this 2 business. The consumer business went extremely well. 3 The commercial business on current market we had, it 4 wasn't as smooth. We had some different challenges 5 there. But the consumer side went extremely well. The 6 head of the consumer that was at the time would have 7 been instrumental in making sure the consumer line went 8 well. The head of the commercial bank would have been, 9 you know, engaged in making sure that went as well as 10 possible. Phil, I would say, was -- was -- had 11 oversight to make sure all those entities came together 12 well because of the nature of the fact there was 13 integration of the region.</p> <p>14 Q. Who was the head of the consumer bank at that 15 time?</p> <p>16 A. I believe, at this time, this would have been 17 2019 -- I believe, at this time, it was Tim Spence.</p> <p>18 Q. And who was the head of the commercial bank?</p> <p>19 A. The commercial bank is -- Kevin Lavender 20 probably would have been elevated, at this time, to the 21 large corp. I believe Lars still had the core middle 22 market, commercial bank, at this time. But once again, 23 I don't have that right directly in front of me. But I 24 believe that was those individuals that you mentioned, 25 to the best of my recall.</p>

<p>Page 152</p> <p>1 Q. Last bullet point reads, ensure timely 2 execution of talent management actions to make certain 3 the very best leaders are in key positions. 4 What did you mean by that? 5 A. That's his role. That's what -- that's what 6 oversight and that's what administrative role is, over 7 the regions, is to make sure talent management actions 8 happen in a timely manner. 9 (Exhibit 15 is marked for identification.) 10 BY MR. SABA: 11 Q. Mr. Carmichael, I've handed you a three-page 12 document which is marked as Exhibit Number 15. This is 13 defendant's disclosure of fact witnesses. Can you see 14 that? 15 A. I do. 16 Q. And these are witnesses that defendants may 17 call at trial. Looking at number 4 on this list, who is 18 Emerson L. Brumback? 19 A. Longstanding member of the board of directors, 20 independent director. 21 Q. And what is your understanding of what Emerson 22 Brumback would know about this case or be able to offer 23 or add to this case? 24 A. Nothing more than the rest of the board 25 understands about this case.</p>	<p>Page 154</p> <p>1 A. Mr. Brumback was the head of the audit 2 committee for many years. I'm not -- I can't recall 3 other committees he might have been on over the long 4 period of time. But the one he chaired for the majority 5 of time that I can recall was the head of the audit 6 committee. He stepped off that recently, as he's 7 transitioning off the board and retiring from the -- 8 Q. Did you have any specific conversations with 9 Mr. Brumback regarding CEO succession? 10 MR. CIOFFI: Objection to timeframe. 11 BY MR. SABA: 12 Q. Any time after January 1, 2018? 13 A. I have no independent discussions separate 14 from any discussion I had with the rest of the board 15 during talent management. 16 Q. Was Ms. Mallesch on any committees? 17 A. Ms. Mallesch, today, I believe she has -- 18 she's now responsible for audit. Emerson might have 19 gone over to risk -- did go over the risk at some point 20 to chair the risk committee. I don't know exactly when 21 that transition happened, but Eileen came in, she was 22 assigned after I think one year -- I think you have to 23 be on the board one year before you can take over a 24 committee. She now has responsibility for audit. And I 25 think Emerson has responsibilities -- still has for --</p>
<p>Page 153</p> <p>1 Q. Who is Eileen Mallesch? 2 A. Independent board member. 3 Q. How long has Eileen Mallesch been a member of 4 the board? 5 A. I don't know exactly. I think she came on 6 right before or close to when I became CEO, somewhere in 7 that timeframe. Maybe right after. So five-plus years, 8 maybe longer. 9 Q. And what factual information would Eileen 10 Mallesch be able to provide about this case? 11 A. Same as Emerson Brumback, no more than the 12 rest of the board. 13 Q. Susan Zaunbrecher, what's your understanding 14 of what Susan Zaunbrecher would be able to provide for 15 this case? 16 A. She's a chief legal officer, so she has -- the 17 only knowledge she has is what's transpired and when 18 Phil resigned -- quit the company, she was involved in 19 those discussions. She was involved in communicating 20 with me during that timeframe, and she was involved in 21 engaging outside counsel. 22 Q. How long has Mr. Brumback been on the board? 23 A. As long as I can recall. So well before I 24 became CEO. 25 Q. Is Mr. Brumback on any committees?</p>	<p>Page 155</p> <p>1 for risk in the bank. 2 Q. Did she serve -- did Eileen Mallesch serve on 3 any committees during 2018 or '19? 4 A. 2018 or '19, any committees? I don't recall. 5 That information is all available publicly in the proxy. 6 MR. SABA: Can we go off the record? 7 VIDEOGRAPHER: Time is 2:23 p.m. 8 (A recess was taken from 2:23 to 2:39.) 9 VIDEOGRAPHER: Time is 2:39 p.m. We're back 10 on the record. 11 (Exhibit 16 is marked for identification.) 12 BY MR. SABA: 13 Q. Mr. Carmichael, I've handed you what's been 14 marked as Exhibit Number 16, which is Bates stamped 15 Fifth Third McHugh 0214533 through 0214550. Can you 16 identify this document for me, please? 17 A. The title of it says Fifth Third inclusion 18 tool kit, from Awareness to Advocacy. 19 Q. Have you seen this document before? 20 A. It was -- I would imagine it was presented in 21 one of our inclusion and diversity discussions. I can't 22 recall exactly when I saw it, but I would assume I would 23 see something of this nature, because it's got me on the 24 front page of it. 25 Q. Did they ever have you review this document?</p>

<p>Page 156</p> <p>1 A. My -- I would only be assuming that I would 2 have probably read -- read over it and they would 3 probably have presented it to enterprise, something of 4 this importance to the company. I just don't recall 5 when and how.</p> <p>6 Q. Did you ever receive any training regarding 7 microaggression?</p> <p>8 A. We have inclusion and diversity training every 9 year that's online that we go through. I've brought 10 external individuals in to teach unbiased -- unconscious 11 biases training, which I thought was fantastic. I also 12 had shared that training with the board.</p> <p>13 So as part of our annual process, I would have 14 been exposed and gone through the training module, which 15 I go through all the training modules, I'm required to 16 each year, so I would have been exposed to it in that 17 form.</p> <p>18 Q. You said you brought individuals in to provide 19 training; is that right?</p> <p>20 A. We brought an external company in, individual 21 lady in particular, ex-New York police individual, 22 worked for the New York Police Department, police 23 officer. She was -- had a company that taught 24 unconscious biases. I thought she did a fantastic job. 25 I brought her in to train and educate our management</p>	<p>Page 158</p> <p>1 any other individuals you brought in to provide training 2 regarding microaggression or unconscious bias?</p> <p>3 MR. CIOFFI: Objection. Just so the record is 4 clear, when you say "you," do you mean him 5 personally, or the company?</p> <p>6 MR. SABA: Right now, I'm asking him 7 personally. He said he brought this woman in, so 8 I'm asking --</p> <p>9 MR. CIOFFI: Asking for clarification.</p> <p>10 THE WITNESS: Then to be clear, Theresa 11 Tanner, head of the human capital group, brought 12 this individual in. I was exposed to her, Theresa 13 shared her program with me, I had a chance to speak 14 with her, and I had recommended we bring her in for 15 a management committee. So Theresa Tanner brought 16 her in under my direction from management 17 committee. But Theresa Tanner's the one who 18 introduced her to the firm.</p> <p>19 MR. SABA: Okay.</p> <p>20 THE WITNESS: Her company to the firm. The 21 term "microaggression" was not used, it was 22 inclusion and diversity is -- is how we would refer 23 to this, as the document states. Not 24 microaggression or -- yeah, microaggression. 25 BY MR. SABA:</p>
<p>Page 157</p> <p>1 committee, which is our top, you know, 100 people in the 2 organization. Mr. McHugh was part of that. Then I 3 brought her in because she did such a fantastic job, I 4 had her -- had her do the same thing for the board, 5 which they greatly appreciated, as part of the board 6 education.</p> <p>7 Q. What's her name?</p> <p>8 A. I don't recall her name.</p> <p>9 Q. Do you recall the name of her company?</p> <p>10 A. I don't. It's been a while.</p> <p>11 Q. What years did you bring her in?</p> <p>12 A. I would say shortly after I became CEO, 13 because I remember Theresa Tanner was -- Theresa Tanner 14 was the one that identified her and brought her in. 15 Theresa Tanner was here up through 2000 I think '16, 16 '17. So it would have been shortly thereafter I became 17 CEO of the company, so roughly that 2016-2017 timeframe.</p> <p>18 Q. How many times total did this person come in 19 that was a former police officer?</p> <p>20 A. For the unbiased -- unconscious bias training, 21 she came in twice, because Theresa had her in for 22 another event, I brought her in because that went so 23 well for the management committee, then I brought her in 24 for the board. So at least three times.</p> <p>25 Q. Other than this woman you mentioned, are there</p>	<p>Page 159</p> <p>1 Q. Going back to my question before and 2 rephrasing it, are you aware of any other individuals 3 that Fifth Third brought in to do training on either 4 unconscious bias or microaggression?</p> <p>5 A. I don't have that date in front of me with 6 firms, but I know Theresa's engaged other entities, 7 external trainings along those lines. I don't know 8 exactly who, what timeframe, that would be something 9 that you'd have to talk to Theresa Tanner about.</p> <p>10 Q. What is your understanding of what is 11 unconscious bias?</p> <p>12 A. It's -- it's -- it's when you have an 13 unconscious bias, basically, based on your upbringing, 14 based on what you've been exposed to. You know, don't 15 think it's intentional. You don't, you know, you're not 16 being intentional about it, but based on your background 17 and your experiences, you may make decisions that have a 18 certain level of bias associated with them, but not 19 intentional.</p> <p>20 Q. And what is your understanding of what 21 constitutes microaggression?</p> <p>22 A. It think it would be a negative, derogatory, 23 demeaning action or comment of a protected class. 24 Something that could be related to bullying, very 25 demeaning, not appropriate.</p>

<p>Page 160</p> <p>1 Q. Referring to Exhibit 16, and specifically</p> <p>2 page 5, Fifth Third McHugh 0214537, do you see the</p> <p>3 definition of microaggression provided in Fifth Third's</p> <p>4 materials?</p> <p>5 A. I do see that.</p> <p>6 Q. Do you agree with that definition of</p> <p>7 microaggression?</p> <p>8 A. I'm not an expert at this, but that's the</p> <p>9 definition that we used in this documentation, so.</p> <p>10 Q. You agree it indicates a comment or action</p> <p>11 that subtly, and often unconsciously or unintentionally,</p> <p>12 expresses a prejudiced attitude toward a member of a</p> <p>13 marginalized group; is that right?</p> <p>14 A. That's what it says.</p> <p>15 Q. Okay. So it doesn't have to be intentionally</p> <p>16 demeaning; is that right or do I have to --</p> <p>17 A. It doesn't have to be. It could be. Doesn't</p> <p>18 have to be.</p> <p>19 Q. In fact, somebody could intend something as a</p> <p>20 compliment or a badge of honor, and yet it still could</p> <p>21 be a microaggression.</p> <p>22 MR. CIOFFI: Objection. Mischaracterizes what</p> <p>23 the document says, but you may answer.</p> <p>24 THE WITNESS: I'm not on expert in this case.</p> <p>25 I couldn't tell you. I couldn't answer that</p>	<p>Page 162</p> <p>1 know, deceitful. Nothing of those things that -- that I</p> <p>2 would characterize it with Phil, so I was taken back why</p> <p>3 he refers to himself as the silver fox.</p> <p>4 I'd never referred to himself -- referred to</p> <p>5 him as a silver fox. I would never have a reason to do</p> <p>6 that. It doesn't make sense to me. But he refers to</p> <p>7 himself that way and had numerous times to me. I've</p> <p>8 never heard of my executives or anybody call him the</p> <p>9 silver fox.</p> <p>10 Q. And when were the specific dates and times --</p> <p>11 A. I don't have dates and times of when he said</p> <p>12 that. It was about the president circle trip, one of</p> <p>13 the trips, because we were going to an all-inclusive</p> <p>14 venue, and I was concerned about exposure on an</p> <p>15 all-inclusive event to alcohol and so forth, and Phil</p> <p>16 said, not to worry, the silver fox has this, I'm in</p> <p>17 control, you don't need to worry it.</p> <p>18 I've heard him mention that, the silver fox</p> <p>19 phrase, a few times. Once again, I've never used it.</p> <p>20 I've never heard anyone else use it. It would have</p> <p>21 been, you know, it just wasn't -- you know, he embodied</p> <p>22 it, he was proud of it, he boasted about it. I found</p> <p>23 that very, very telling and I mean unusual that someone</p> <p>24 would do that. That's what he did.</p> <p>25 Q. Okay. You said a couple -- you said you heard</p>
<p>Page 161</p> <p>1 question.</p> <p>2 BY MR. SABA:</p> <p>3 Q. You've received your own training. You've</p> <p>4 received your own understanding; is that right?</p> <p>5 A. I have.</p> <p>6 Q. The goal of Fifth Third's training is to</p> <p>7 remove unconscious bias or microaggressions in the</p> <p>8 workplace; isn't that right?</p> <p>9 A. We would not be tolerant of any of those type</p> <p>10 of actions. If they're inappropriate actions and knew</p> <p>11 that definition, actions of this nature, we would review</p> <p>12 as inappropriate. So yes.</p> <p>13 Q. Were you aware that several of your executives</p> <p>14 referred to Phil McHugh as the silver fox?</p> <p>15 A. The only executive that ever referred --</p> <p>16 that I ever heard refer to that term the silver fox was</p> <p>17 Phil McHugh. Nobody in my organization have I ever</p> <p>18 heard refer to Phil McHugh as the silver fox, except for</p> <p>19 Phil McHugh. In my office, when we were talking about</p> <p>20 the president circle trip, the silver fox has this.</p> <p>21 The silver -- not when -- when the silver fox is on the</p> <p>22 job, sticking his chest out, strutting around as a badge</p> <p>23 of honor. He said it multiple times. I thought it was</p> <p>24 very odd that someone would refer to himself like that,</p> <p>25 right. Because I think of a fox as sly, smart, you</p>	<p>Page 163</p> <p>1 him use it a few times; is that right?</p> <p>2 A. I did.</p> <p>3 Q. How many times is "a few"?</p> <p>4 A. At a minimum, two to three times.</p> <p>5 Q. Okay. And what do you mean he boasted about</p> <p>6 it?</p> <p>7 A. He sticks his chest out; he's proud of it. He</p> <p>8 was strutting around my office. The silver fox has</p> <p>9 this. Those types of comments, I view that as boasting.</p> <p>10 Q. Who was present when Phil was strutting around</p> <p>11 your office with his chest out, referring to himself as</p> <p>12 the silver fox?</p> <p>13 A. Greg Carmichael was present.</p> <p>14 Q. Just the two of you?</p> <p>15 A. Greg Carmichael was present and Phil McHugh.</p> <p>16 He was making the comments, I was listening to them.</p> <p>17 Q. And do you recall what year this occurred?</p> <p>18 A. I do not. I do not have year and timeframes.</p> <p>19 He was leading the president's circle for multiple</p> <p>20 years, but this wasn't a term I heard once. It was,</p> <p>21 like I said, a minimum two to three times, only by Phil</p> <p>22 McHugh.</p> <p>23 Q. How many times did Phil McHugh strut around</p> <p>24 your office with his chest out referring to himself as</p> <p>25 the silver fox?</p>

<p style="text-align: right;">Page 164</p> <p>1 A. Just that one time.</p> <p>2 Q. Have you ever seen where any members of the</p> <p>3 enterprise committee ever referred to Phil McHugh as the</p> <p>4 silver fox?</p> <p>5 A. I've already answered that question. I said</p> <p>6 no.</p> <p>7 Q. In writing. You said you've never heard</p> <p>8 anybody say that. I'm asking if you've ever read it in</p> <p>9 writing?</p> <p>10 A. I've never read it in writing.</p> <p>11 Q. Would you recognize it as inappropriate for</p> <p>12 members of the enterprise committee to refer to Phil</p> <p>13 McHugh as the silver fox?</p> <p>14 A. Phil McHugh --</p> <p>15 MR. CIOFFI: Objection. You may answer if you</p> <p>16 know.</p> <p>17 THE WITNESS: Phil McHugh referred to himself</p> <p>18 as the silver fox. If he did it in front of me,</p> <p>19 I'm assuming he did it in front of other members of</p> <p>20 the team quite a bit. If someone embraces</p> <p>21 something, embodies it, is proud of it, and thinks</p> <p>22 it's a compliment to their character and who they</p> <p>23 are, that's them -- that's them viewing themselves</p> <p>24 that way. That's -- that's -- if someone refers to</p> <p>25 them again that way, it's because he wants them --</p>	<p style="text-align: right;">Page 166</p> <p>1 different question.</p> <p>2 MR. SABA: Yes, it was.</p> <p>3 MR. CIOFFI: No, it wasn't. You keep</p> <p>4 repeating questions and saying they're different.</p> <p>5 Read back his last question and you may answer that</p> <p>6 again.</p> <p>7 (The record was read.)</p> <p>8 MR. SABA: Let me go back.</p> <p>9 BY MR. SABA:</p> <p>10 Q. Do you recognize, Mr. Carmichael, that there</p> <p>11 are times where it would be inappropriate to refer to a</p> <p>12 black employee at Fifth Third as black fox even though</p> <p>13 they may have referred to themselves as black fox?</p> <p>14 A. I'm not going to speculate on this. You're</p> <p>15 talking about someone's skin color versus potentially</p> <p>16 someone's hair color. Phil's had silver hair since the</p> <p>17 day I've known him. So I've never known anything but</p> <p>18 Phil with silver hair, so I don't equate that to age</p> <p>19 whatsoever. I don't necessarily believe that to be a</p> <p>20 microaggression. I wouldn't speculate on anything else</p> <p>21 beyond that until I had all the facts in front of me, so</p> <p>22 I'm not going to speculate.</p> <p>23 Q. Do you recognize that black fox is a</p> <p>24 microaggression?</p> <p>25 A. I'm not going to speculate.</p>
<p style="text-align: right;">Page 165</p> <p>1 himself to be referred that way. I've never heard</p> <p>2 it, never seen it in writing. I'm learning about</p> <p>3 it.</p> <p>4 BY MR. SABA:</p> <p>5 Q. In your mind, would it be appropriate to refer</p> <p>6 to a black employee who refers to himself as black fox?</p> <p>7 MR. CIOFFI: Objection.</p> <p>8 THE WITNESS: I'm not going to speculate.</p> <p>9 There's all kinds of circumstances that could have</p> <p>10 transpired, so I'm not going to speculate on what I</p> <p>11 would or wouldn't consider. There's a lot of</p> <p>12 variables that have to be understood, and in my HR</p> <p>13 department that would engage, but I'd have to</p> <p>14 understand all the variables and I'm not going to</p> <p>15 speculate under what scenario that --</p> <p>16 BY MR. SABA:</p> <p>17 Q. Are you saying that there's situations where</p> <p>18 it would be appropriate to refer to a black employee as</p> <p>19 black fox if they refer to themselves as black fox --</p> <p>20 MR. CIOFFI: Objection. Asked and answered.</p> <p>21 THE WITNESS: Same answer.</p> <p>22 BY MR. SABA:</p> <p>23 Q. This was a different question. Are you saying</p> <p>24 that there are appropriate times?</p> <p>25 MR. CIOFFI: Objection, Counsel. It wasn't a</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. I'm not asking you to speculate. I'm asking</p> <p>2 you whether or not the term "black fox" would be a</p> <p>3 microaggression?</p> <p>4 MR. CIOFFI: Objection, he's asked and</p> <p>5 answered it.</p> <p>6 THE WITNESS: Do I have all the circumstances?</p> <p>7 Understood all the facts? I don't have an opinion</p> <p>8 yet.</p> <p>9 BY MR. SABA:</p> <p>10 Q. What circumstances would you need to determine</p> <p>11 that?</p> <p>12 A. I'm not going to speculate.</p> <p>13 Q. I'm not asking you to speculate. I'm asking</p> <p>14 you what circumstances would you need to make that</p> <p>15 determination?</p> <p>16 MR. CIOFFI: Counsel, your question's a</p> <p>17 hypothetical and by its very nature calls for</p> <p>18 speculation. You can't require him to speculate.</p> <p>19 MR. SABA: I'm not asking him to speculate.</p> <p>20 MR. CIOFFI: Yes, you are. He said he can't</p> <p>21 answer the question.</p> <p>22 MR. SABA: I'm not asking him to speculate.</p> <p>23 I'm asking him under what circumstances would it be</p> <p>24 inappropriate for you to refer to a black employee</p> <p>25 at Fifth Third as black fox? It's not speculation;</p>

<p>1 it's a specific question.</p> <p>2 MR. CIOFFI: Objection. It's a hypothetical</p> <p>3 question. Until he knows all the conditions of the</p> <p>4 hypothetical, he's not going to speculate and he's</p> <p>5 entitled not to speculate. Period. You can't make</p> <p>6 him speculate about something that's never</p> <p>7 happened. Ask it one more time and then, you know,</p> <p>8 he can answer it.</p> <p>9 BY MR. SABA:</p> <p>10 Q. Under what circumstances would it be</p> <p>11 inappropriate to refer to a black employee at Fifth</p> <p>12 Third as black fox?</p> <p>13 A. I'd have to understand all the circumstances.</p> <p>14 I'm not going to speculate.</p> <p>15 Q. What circumstances would you need to</p> <p>16 understand to make the determination that that would be</p> <p>17 inappropriate?</p> <p>18 MR. CIOFFI: Objection. It's just a different</p> <p>19 form of the question.</p> <p>20 THE WITNESS: I'm not going to speculate,</p> <p>21 don't have an answer. I'd have to have the facts</p> <p>22 in front of me. I just gave examples where silver</p> <p>23 fox of someone's hair color doesn't equate to</p> <p>24 discriminatory practice or a comment about</p> <p>25 someone's age. My brother had hair, gray hair when</p>	Page 168	<p>1 and still lead to unconscious bias; is that right?</p> <p>2 MR. CIOFFI: Objection. That's your opinion.</p> <p>3 Are you asking if he agrees with your</p> <p>4 characterization?</p> <p>5 MR. SABA: I asked him a question. Can you</p> <p>6 answer the question?</p> <p>7 THE WITNESS: Repeat the question.</p> <p>8 MR. SABA: You understand that a</p> <p>9 microaggression can lead to unconscious bias; isn't</p> <p>10 that right?</p> <p>11 MR. CIOFFI: Objection. Sort of the opposite.</p> <p>12 But if you can answer that question.</p> <p>13 THE WITNESS: I can't answer that question.</p> <p>14 MR. SABA: You haven't received enough</p> <p>15 training to understand that the reason</p> <p>16 microaggressions are a problem is that they can</p> <p>17 lead to unconscious bias in the workplace?</p> <p>18 MR. CIOFFI: Objection. Mischaracterization</p> <p>19 of the definition.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MR. CIOFFI: But are you asking him to just</p> <p>22 agree with your statement; is that -- I'm just</p> <p>23 trying to clarify what your question is.</p> <p>24 MR. SABA: I'm trying to understand his</p> <p>25 understanding. That's where the question goes to.</p>	Page 170
<p>1 he was in his 30's, so I mean, I would view that</p> <p>2 completely different than the comment you just made</p> <p>3 about an individual. And I'd have to understand</p> <p>4 those circumstances too, and I'm not going to</p> <p>5 speculate.</p> <p>6 BY MR. SABA:</p> <p>7 Q. So as you sit here today, you don't</p> <p>8 acknowledge that the term silver fox is an age</p> <p>9 reference?</p> <p>10 A. Absolutely not. Absolutely not. As I said</p> <p>11 before, I've never known Phil not to have gray hair. As</p> <p>12 far as I know, he had gray hair when he was in Little</p> <p>13 League. My brother had gray hair before he was 40 years</p> <p>14 old. My best friend's wife has beautiful silver hair,</p> <p>15 and she's not old.</p> <p>16 So I don't equate hair color to someone's age.</p> <p>17 It could imply -- could be someone older has gray hair,</p> <p>18 but they could be dying it too, black. So I don't</p> <p>19 necessarily get to that outcome whatsoever. I sure</p> <p>20 don't get there when someone boasts about it and</p> <p>21 promotes it about himself and is proud of it. So I</p> <p>22 would have to understand all that before I jump to a</p> <p>23 conclusion that that was a microaggression.</p> <p>24 Q. It's apparent -- at least you understand</p> <p>25 that a microaggression can be intended as a compliment</p>	Page 169	<p>1 Other than your objection and coaching.</p> <p>2 MR. CIOFFI: There's no coaching. You're</p> <p>3 trying to get him to answer a question the way you</p> <p>4 want it answered. He's giving you an answer. He</p> <p>5 can't speculate.</p> <p>6 THE WITNESS: I'm not going to speculate. You</p> <p>7 look at all the factors. The reference to silver</p> <p>8 fox is a reference made by Phil McHugh, who's proud</p> <p>9 of it. He was proud in my office, and at the end</p> <p>10 of the day I don't associate that whatsoever with</p> <p>11 age. That's how he viewed himself, not as I viewed</p> <p>12 him. I never called him that, I never thought of</p> <p>13 him that way. I never thought of him as smart,</p> <p>14 cunning, clever like you would a fox, so I was</p> <p>15 taken aback by that, but he continued to promote</p> <p>16 it.</p> <p>17 And at the end of the day if other people</p> <p>18 referred to him that way, that situation may have</p> <p>19 existed, I'm not aware of it. It was never brought</p> <p>20 to my attention. Phil McHugh never came to me with</p> <p>21 an issue. I'm not aware of him going to HR with an</p> <p>22 issue.</p> <p>23 BY MR. SABA:</p> <p>24 Q. You recognize that Phil McHugh was included in</p> <p>25 what would be recognized as a group of the older</p>	Page 171

<p>1 employees of Fifth Third; isn't that right?</p> <p>2 A. I think that's pretty -- I mean, at the end of</p> <p>3 the day we don't look at age. We don't consider age.</p> <p>4 We consider ability. I mean, I think right now we've</p> <p>5 got two presidents that are 80 years old that are up</p> <p>6 there in years. You got Warren Buffet. You got -- you</p> <p>7 got other senior executives. Jamie Diamond,</p> <p>8 67-years-old. So, I mean, you have a lot of senior</p> <p>9 leaders that are excellent in their job. We never look</p> <p>10 at age when we think about leadership. We look at</p> <p>11 capabilities and talent, and that's how the board</p> <p>12 thought about it.</p> <p>13 Q. The board was never provided with any age</p> <p>14 information; is that correct?</p> <p>15 A. I didn't say that, you said that.</p> <p>16 Q. I'm asking you that.</p> <p>17 A. Well, look through the documentation. I'm</p> <p>18 sure on -- potentially on town reviews or something</p> <p>19 where you we have to put in the proxy, so yeah, the</p> <p>20 board reviews the proxy. They see the proxy. There's</p> <p>21 age in the proxy. It's a requirement.</p> <p>22 Q. Did you ever ask Phil McHugh why he called</p> <p>23 himself the silver fox?</p> <p>24 A. I never did.</p> <p>25 Q. Do you think that microaggressions are</p>	<p>Page 172</p> <p>1 BY MR. SABA:</p> <p>2 Q. Has Fifth Third ever provided specific</p> <p>3 training regarding age discrimination in the workplace?</p> <p>4 A. I believe that is part of our annual training,</p> <p>5 when we talk about discriminatory practices, that age is</p> <p>6 part of that training. I may not be correct, but once</p> <p>7 again, that training has evolved. We've had various</p> <p>8 vendors at times issuing that training, presenting that</p> <p>9 training. So age absolutely has been part of the</p> <p>10 curriculum at different points in time. I'm not sure</p> <p>11 it's in there every single year. It might be. I'd have</p> <p>12 to go look.</p> <p>13 Q. And what -- what do you recall about age</p> <p>14 specifically as part of the training regarding</p> <p>15 discrimination at Fifth Third Bank?</p> <p>16 A. Age should never be a factor in any of our</p> <p>17 decisions and it never has been. All right. People</p> <p>18 tell us they have a certain runway or are interested in</p> <p>19 doing something at a certain period of time, we factor</p> <p>20 those things that in, but those aren't age-related.</p> <p>21 Those are their desires from a timing perspective. It</p> <p>22 could be retirement, could be anything else, but we</p> <p>23 never consider someone's age when we make a decision.</p> <p>24 We determine who's best qualified to do the</p> <p>25 job in the best interest of the company, in the best</p>
<p>1 appropriate in the workplace?</p> <p>2 MR. CIOFFI: Counsel, just by way of</p> <p>3 clarification, you're talking about the definition</p> <p>4 that appears on page 5 of Exhibit 15?</p> <p>5 MR. SABA: Sure.</p> <p>6 MR. CIOFFI: Look at it and read that, then</p> <p>7 answer the question.</p> <p>8 THE WITNESS: A comment or action that subtly</p> <p>9 and often unconsciously or unintentionally</p> <p>10 expresses a prejudiced attitude toward a member of</p> <p>11 a marginalized group (such as commenting that a</p> <p>12 black person "talks white" if they are articulate</p> <p>13 and eloquent or moving to the opposite side of the</p> <p>14 street to avoid interacting with a particular race</p> <p>15 group).</p> <p>16 This -- we have no place -- no place for</p> <p>17 discriminatory practices in the workplace; I made</p> <p>18 that very clear. This training, microaggression,</p> <p>19 which I think is a fairly new term, I'm not sure</p> <p>20 how old that term is, all right. As is written</p> <p>21 here on paper, no. We wouldn't -- we wouldn't</p> <p>22 accept that. We wouldn't tolerate that. I'm not</p> <p>23 saying the situation we were just talking about,</p> <p>24 that this applies whatsoever.</p> <p>25</p>	<p>Page 173</p> <p>1 interest of our shareholders, which go hand in hand, we</p> <p>2 make a decision based on capabilities, never about age.</p> <p>3 Age never comes up in that discussion.</p> <p>4 Q. Fifth Third does not have any business groups</p> <p>5 that would support the issue of age; is that right?</p> <p>6 MR. CIOFFI: Objection to the form. Lacks a</p> <p>7 foundation. He's not the human resource director.</p> <p>8 If you can answer the question.</p> <p>9 THE WITNESS: I don't know if that's one of</p> <p>10 our business resource groups or not. It would be a</p> <p>11 large group if it was. Everybody over 40 would be</p> <p>12 part of that group.</p> <p>13 BY MR. SABA:</p> <p>14 Q. Exhibit Number 16 makes no reference to any</p> <p>15 business resource group directed toward age, does it?</p> <p>16 MR. CIOFFI: Objection. The document speaks</p> <p>17 for itself. Do you want him to read all through</p> <p>18 it?</p> <p>19 MR. SABA: Feel free.</p> <p>20 THE WITNESS: First page, it says stamp out</p> <p>21 racism and discrimination. Race -- or age is a</p> <p>22 protected class. So it says right there</p> <p>23 discrimination in this country, so it references</p> <p>24 age. People understand age is a protected class.</p> <p>25 The first page.</p>
<p>Page 174</p>	<p>Page 175</p>

<p>1 BY MR. SABA:</p> <p>2 Q. My specific question was, Fifth Third did not</p> <p>3 have a business resource group specifically directed</p> <p>4 toward age?</p> <p>5 MR. CIOFFI: Objection, Counsel, that was not</p> <p>6 your last question. Your last question was, does</p> <p>7 the document, anywhere, have a reference to age,</p> <p>8 and he just answered that question. Now you're</p> <p>9 asking him a different question.</p> <p>10 MR. SABA: That's not the question I asked.</p> <p>11 MR. CIOFFI: It is. The record will speak for</p> <p>12 itself. It's in there. It's not going to</p> <p>13 disappear. So if you want to change it.</p> <p>14 MR. SABA: The question's right there and it's</p> <p>15 not changed.</p> <p>16 MR. CIOFFI: Of course it is. It's clear.</p> <p>17 But.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Did you understand the question,</p> <p>20 Mr. Carmichael?</p> <p>21 A. You've asked a couple, so why don't you try</p> <p>22 again.</p> <p>23 Q. Okay. Sure. You ready? Specifically,</p> <p>24 referring to Exhibit Number 16, does it identify</p> <p>25 anywhere in there a business resource group directed</p>	<p>Page 176</p> <p>1 surprised at the end of the year. So it's really just a</p> <p>2 check-in and conversation. It's, once again, not</p> <p>3 formal.</p> <p>4 Q. Who would you be performing midyear reviews</p> <p>5 of?</p> <p>6 A. My direct reports.</p> <p>7 Q. How many direct reports did you have in the</p> <p>8 summer of 2019?</p> <p>9 A. I don't know offhand.</p> <p>10 Q. Would that include all members of the</p> <p>11 enterprise committee?</p> <p>12 A. If they report -- if they were a member who</p> <p>13 reported to me, and a majority did, it would be every</p> <p>14 one of them. But not all members of management</p> <p>15 committee report to the CEO. So the ones that reported</p> <p>16 to me, I would do their midterm review.</p> <p>17 Q. Do you recall which members of the enterprise</p> <p>18 committee did not report to you?</p> <p>19 A. You have an individual like Melissa Stevens,</p> <p>20 who is on -- didn't report to the -- to the CEO. Let me</p> <p>21 go around the room and think. We elevated another</p> <p>22 individual on inclusion and diversity that didn't report</p> <p>23 initially in to me. So there was a couple individuals</p> <p>24 that didn't report to me. I gave you a couple examples.</p> <p>25 The majority reported to me.</p> <p>Page 178</p>
<p>1 toward age? Did you understand that question?</p> <p>2 A. Now I have clarity, yes.</p> <p>3 Q. Good.</p> <p>4 A. I do not see one listed on page 17.</p> <p>5 Q. Has Fifth Third ever had a business resource</p> <p>6 group directed toward addressing age discrimination?</p> <p>7 A. I can't answer that question; I'm not aware.</p> <p>8 (Exhibit 17 is marked for identification.)</p> <p>9 BY MR. SABA:</p> <p>10 Q. Mr. Carmichael, you've been handed Exhibit</p> <p>11 Number 17, Bates stamp Fifth Third McHugh 086284. Can</p> <p>12 you identify that for me, please?</p> <p>13 A. Looks like a calendar entry for a midyear</p> <p>14 review with Phil McHugh in my office on 8/15/2019, at</p> <p>15 1:00 p.m., going to 8/15/2019, to 1:30.</p> <p>16 Q. Do you recall having Phil Hugh's midyear</p> <p>17 review on August 15, 2019?</p> <p>18 A. I don't know the exact date, but it would</p> <p>19 be -- anywhere from June to that period of time would be</p> <p>20 reasonable, so there would have been a discussion had on</p> <p>21 his midterm, yes.</p> <p>22 Q. Explain to me the process for midyear reviews.</p> <p>23 A. Midyear reviews are very informal. They're</p> <p>24 not typically documented. It's a touch base on how the</p> <p>25 year's going. We never want our executives to be</p>	<p>Page 177</p> <p>1 Q. What role did Bob Shaffer have with respect to</p> <p>2 midyear reviews of members of the enterprise committee?</p> <p>3 A. I would touch base with Bob and ask him if he</p> <p>4 had any input from his role in the organization as</p> <p>5 the head of human capital. He would make sure that</p> <p>6 these meetings were on the calendar. You know, keep the</p> <p>7 process moving forward, and just making sure that these</p> <p>8 were on the calendar, and probably some conversation</p> <p>9 that if there's anything that we wanted -- that he</p> <p>10 thought he wanted me to emphasize or share during that</p> <p>11 discussion that's come to his observation or his</p> <p>12 attention that he's observed, that he may share that</p> <p>13 with me.</p> <p>14 Q. Other than touching base with Bob Shaffer,</p> <p>15 what else would you do to prepare for a midyear review?</p> <p>16 A. It's an informal process, there's not a lot I</p> <p>17 would do. This is based on my observations throughout</p> <p>18 the year, based on the expectations that we set forth</p> <p>19 for the organization and the individual's</p> <p>20 responsibility. Very informal, very casual, just a</p> <p>21 touch and, hey, things are going well. Hey, do a little</p> <p>22 bit more of this, or what's going on here? Or hey, we</p> <p>23 got to think about this.</p> <p>24 Those type of things. Conversations. But</p> <p>25 nothing -- nothing, once again, formal. I didn't</p> <p>Page 179</p>

<p style="text-align: right;">Page 180</p> <p>1 prepare a lot for it. The formal process was the end of 2 the year review that happens in February. That's where 3 we had the deeper discussion, the ratings, risk 4 assessments are brought forth at that point. 5 Q. Did you do anything in particular to prepare 6 for Phil McHugh's midyear review on August 15, 2019? 7 A. Well, in that -- at that point in time, I 8 would have had a conversation and -- and sought Phil's 9 interest in being considered for the board's 10 consideration for an emergency successor. There were 11 some situations going on with me at that time that were 12 personal in nature that may have caused me to have to -- 13 to have to step down earlier than my desires or the 14 board's desires would have been. 15 So I was asking Phil if he wanted to be 16 considered as an emergency successor by the board. I 17 was going into talent management in December. I would 18 never put an emergency successor in front of the board 19 that didn't want the job because, by nature, when 20 something happens to the CEO, that's a very difficult 21 job to step into. A lot's going to be going on, a lot 22 of questions, shareholders, analysts, those type of 23 things are going to be -- the organization. 24 So I wanted to make sure that the individual 25 would be interested in stepping up as an emergency</p>	<p style="text-align: right;">Page 182</p> <p>1 He said he absolutely did, he wanted to be 2 considered for the position, and I -- he fully 3 understands it's the board's decision if they need an 4 emergency successor, which they did not, by the way. 5 There was no need for them to go down the emergency 6 successor route, so they didn't execute that play. I 7 ended up staying on longer. There was no need for that. 8 The board didn't execute that play. But I wanted his 9 understanding that he was interested in a role before I 10 put him on the list and presented it to the board, and 11 he said absolutely. 12 Q. Anything else that happened during that 13 midyear review of Phil McHugh on August 15, 2019? 14 A. I don't recall any other discussion that comes 15 to mind at that time, besides the normal check-in on his 16 organization and any comments I might have had about his 17 business responsibilities. I just don't recall what 18 those would have been. 19 Q. Did you indicate during that August 15, 2019, 20 midyear review with Phil McHugh that you were planning 21 on pursuing other matters? 22 A. I told Phil that I had some personal issues, I 23 might be pursuing other matters, no definites, nothing 24 for certain, but I had some cause for concern and my job 25 is to make sure the organization's protected, and that</p>
<p style="text-align: right;">Page 181</p> <p>1 successor if the board determined what was necessary, at 2 the board's call. I was going to ask Phil if he was 3 interested in that opportunity to keep the lights on, to 4 be an emergency successor in the event something 5 happened to me earlier than we initially had planned. 6 So I did have a conversation with Bob. I was 7 going to have that conversation with Phil. Did he have 8 any concerns that Phil wouldn't be a good emergency 9 successor and any issue with him being an emergency 10 successor, and he did not have any concerns and thought 11 it was appropriate, and I asked Phil McHugh, as I asked 12 Tayfun Tuzun the same question during his midterm 13 review. 14 Q. Other than bringing up these conversations 15 with Bob Shaffer, did you do anything else to prepare 16 for Phil McHugh's midyear review on August 15, 2019? 17 A. I do not believe so. 18 Q. What happened at Phil McHugh's 2019 midyear 19 review on August 15, 2019? 20 A. I asked Phil if he would want to be considered 21 as an emergency successor, and that I was going to put 22 him and add him to the list to the board and recommend 23 him as an emergency successor, and did he want to be 24 considered for that position in the event that I had to 25 step down earlier.</p>	<p style="text-align: right;">Page 183</p> <p>1 the board had options in the event that they needed an 2 emergency successor. At that point in time, for 3 personal reasons, there was a heightened sensitivity 4 that that situation might exist. And I wanted to 5 confirm that he was interested in it and being 6 considered as emergency successor if the board felt the 7 need to execute on an emergency successor. As part of 8 our succession planning process until they identified 9 and were comfortable with the next CEO of the company. 10 Q. During the August 15, 2019, midyear review of 11 Phil McHugh, did you indicate that you would recommend 12 Phil McHugh to the board to be the next president and 13 chief executive officer until Spence was ready for the 14 assignment? 15 A. Absolutely not. 16 Q. During the August 15, 2019, midyear review of 17 Phil McHugh, did you tell Phil McHugh that he was the 18 most qualified officer on the executive team to take and 19 -- in order to take the role of president and chief 20 executive officer position? 21 A. I did not. I told Phil I thought he was very 22 qualified, I thought he could do a very good job of 23 stepping in, in the emergency situation. He has 30-plus 24 years of experience with the company. He could keep the 25 lights on, could keep the train on track. He could</p>

<p>1 continue to move the organization forward. He's a good 2 backup quarterback in the event that we need to finish 3 the game until the board can make a better and final 4 decision on the permanent replacement for the CEO. 5 Q. During the August 15, 2019, midyear review of 6 Phil McHugh, did you indicate that Tim Spence was not 7 only too young but also lacked necessary banking 8 experience, having been at that point at Fifth Third 9 only four years? 10 A. I did not. 11 Q. During the August 15, 2019, midyear review of 12 Phil McHugh, did Phil McHugh indicate that he absolutely 13 wanted to be president and CEO of Fifth Third Bank? 14 A. He said he was willing to step in as an 15 emergency successor if that's what the board needed and 16 wanted. He would absolutely do that. 17 Q. Did you have an understanding that he would 18 also absolutely want to be president and CEO of Fifth 19 Third Bank? 20 A. Phil was -- never ever had a conversation with 21 me about him being a long-term president of the bank. 22 Never once. If you go back and look at any of these 23 reviews, as we can, you'll see there's never a comment 24 in here about him being the next president and CEO of 25 the company in the review I did with him.</p>	<p>Page 184</p> <p>1 other communications with anybody summarizing what 2 happened during the August 15, 2019, midyear review of 3 Phil McHugh? 4 A. That would not be a practice that we ever -- 5 ever did. I would never send a note on a midterm. I 6 did confirm with Bob that Tim was -- that Phil was 7 interested in being an emergency successor, and I had 8 the conversation with Phil that he'd be interested in 9 being the emergency successor. Because once again, I 10 would not want to put that on a document to the board 11 because that's a big challenge and a big job to step in 12 as an emergency without that individual, one, being 13 asked, and two, having that individual say yes, they 14 would be interested in that role. That's why it 15 occurred and not the final end-of-year review. 16 Q. Is it your testimony that you had a personal 17 health issue and that is why you were approaching Phil 18 McHugh about being an emergency successor for president 19 and CEO? 20 A. I had a personal issue. I won't say any more 21 than that. I had a personal issue. But regardless, I 22 would have had an emergency successor identified on a 23 succession plan for the board to review during the 24 talent management succession planning discussion. 25 So I was more concerned at that point that</p> <p>Page 186</p>
<p>Page 185</p> <p>1 After the 2019 talent management discussion, 2 Phil never came to me and said, what was the outcome of 3 that discussion? Am I going to be the next president 4 and CEO? When we were putting -- vetting Tim through 5 RHR, Phil never came to me and said why not me? The 6 reason for that is, we never had that conversation. He 7 never told me he wanted to be the president and CEO. He 8 absolutely was interested in stepping in if there was a 9 need as an interim emergency successor. He wanted that 10 role when I brought it forth and asked him if he was 11 interested. Beyond that, there was never a 12 conversation, there's no documentation to the board. I 13 did exactly what I said I was going to do with Tim -- or 14 with Phil McHugh. I promoted him as an emergency 15 successor to the board. That's on the 2019 succession 16 planning document. That's what I committed to doing. 17 That's the board's ultimate decision whether they want 18 to execute the emergency plan if they felt they needed 19 one, and he was going to be considered, as was Tayfun 20 Tuzun and another board member. 21 Q. Did you make any notes of the August 15, 2019, 22 midyear review with Phil McHugh? 23 A. It's an informal discussion; I did not take 24 notes. 25 Q. Did you send any text messages, e-mails, or</p>	<p>Page 187</p> <p>1 there may be a need for an emergency successor, given my 2 current personal situation, so I wanted to make sure 3 that that conversation that I had the individual 4 identified that could -- and would be willing to and 5 could step in, in an emergency capacity if the board 6 needed that. That's what occurred. 7 Q. Had emergency successors been previously 8 identified for the role of CEO and president of Fifth 9 Third Bank? 10 A. I think if you go back over our talent decks, 11 I think we have emergency successors, because it's part 12 of our process. As long as the successor planning 13 process has been in place, emergency successors have 14 been identified. 15 So I believe that to be the case, that they 16 would have been on prior -- emergency successors would 17 have been identified prior. 18 There's also a pretty extensive flow chart 19 that kind of goes through the steps of what occurs in an 20 emergency situation to select the next CEO and who could 21 potentially step up as emergency successor. We also 22 have a board member -- I believe it was Emerson 23 Brumback. He's a very qualified ex-president with M&T 24 Bank that was also on that list. 25 Once again, it's going to be the board's</p>

<p>Page 188</p> <p>1 decision. My role is that process and Bob's role was</p> <p>2 identify individuals who we thought could step in, in an</p> <p>3 emergency situation and keep the lights on.</p> <p>4 Q. When did you have a conversation with Bob</p> <p>5 Shaffer about Phil McHugh's review?</p> <p>6 A. Which review are you referring to?</p> <p>7 Q. Midyear review August 15, 2019.</p> <p>8 A. I would have quickly circled back to Bob and</p> <p>9 said we're -- that Phil was interested in the emergency</p> <p>10 successor role, so I had that conversation with him and</p> <p>11 we'll put him on the list for this year.</p> <p>12 Q. Did you ask Bob Shaffer to have a conversation</p> <p>13 with Phil about the issue?</p> <p>14 A. I don't think I asked Bob to have a</p> <p>15 conversation with Phil. Bob communicated to me that</p> <p>16 Phil came to him at our off-site strategy meeting and</p> <p>17 confirmed the conversation that I had with Phil and</p> <p>18 asked if Bob would support that, and I believe Bob said,</p> <p>19 absolutely, yes. That's Bob's role to support people</p> <p>20 the we put on that list, and Bob was supportive of that</p> <p>21 and for that list in my conversations before I even</p> <p>22 talked to Phil.</p> <p>23 Q. Is it your testimony today that Bob clearly</p> <p>24 understood that you were proposing that Phil be the</p> <p>25 emergency successor for president/CEO, and that you were</p>	<p>Page 190</p> <p>1 the fintech space. He understands the space extremely</p> <p>2 well. He worked for a fintech company early in his</p> <p>3 career. He has deep strategic knowledge. He was</p> <p>4 basically the strategist that many of my peers brought</p> <p>5 in to help them develop their strategies. He knows the</p> <p>6 players, he knows their strategies, he knows their</p> <p>7 strengths, their weaknesses. He can articulate every</p> <p>8 single one of them.</p> <p>9 He also was brought in multiple years prior to</p> <p>10 us hiring Tim to do strategy for us. That was his core</p> <p>11 competency. He was extremely good at it. He had</p> <p>12 exposure to the board presenting those strategies. The</p> <p>13 board got to know Tim during those discussions. Tim was</p> <p>14 -- Tim is innovative, he's strategic in thinking, deep</p> <p>15 technology background, deep fintech experience, deep</p> <p>16 network capabilities, deep knowledge of the industry in</p> <p>17 banking.</p> <p>18 He also understood the strengths and</p> <p>19 weaknesses of our peers. He also had a network of other</p> <p>20 CEOs. MB Financial Never happens. We never acquire</p> <p>21 that business in that bank if it's not for Tim Spence.</p> <p>22 You talked to the three board members that are now part</p> <p>23 of Fifth Third's board that were MB Financial, they will</p> <p>24 tell you. It was Tim Spence. They admire Tim, they</p> <p>25 respected Tim, they were excited about Tim's leadership</p>
<p>Page 189</p> <p>1 not proposing Phil to be your successor for</p> <p>2 president/CEO?</p> <p>3 A. Absolutely. Absolutely was crystal clear on</p> <p>4 that. This was emergency successor only in the event</p> <p>5 the board needed an emergency successor, and there was</p> <p>6 three names on that list. And what I told Phil is, I</p> <p>7 would put his name on that list, okay, and recommend him</p> <p>8 as an emergency successor. I thought he'd be -- he'd do</p> <p>9 a good job of it. I did say that because I meant it.</p> <p>10 He would do a good job of that. As an emergency, not as</p> <p>11 the permanent CEO.</p> <p>12 Q. Why would Phil do a good job as an emergency</p> <p>13 CEO and not as the permanent CEO and president?</p> <p>14 A. Phil clearly doesn't have the experience that</p> <p>15 the board was looking for with respect to strategic</p> <p>16 agility, strategic thinking. Doesn't have the</p> <p>17 innovative, innovation gene, mindset. He's not</p> <p>18 innovative. He doesn't have the deep understanding of</p> <p>19 our competitors. He does not have deep understanding of</p> <p>20 our competitor strategy. He doesn't have a technology</p> <p>21 background. He doesn't have deep understandings of the</p> <p>22 financial technology, which is who we're now competing</p> <p>23 mostly against, this fintech. That's the emerging</p> <p>24 threat. He has no background there. He doesn't have a</p> <p>25 network in the fintech space. Tim has a deep network in</p>	<p>Page 191</p> <p>1 in the company, and Tim was the reason that they came to</p> <p>2 Fifth Third.</p> <p>3 It doesn't happen to Phil McHugh. He doesn't</p> <p>4 have that network or any of those experiences that I</p> <p>5 just articulated. What Phil does do is he does a nice</p> <p>6 job of executing against the strategy, of leading an</p> <p>7 organization, of driving task, of completing task, all</p> <p>8 right, and fostering a team organization. Those are</p> <p>9 very good traits, but they're not the traits necessary</p> <p>10 to be the next CEO of the company. Those traits are</p> <p>11 important. Leaders have to develop those.</p> <p>12 But the things that I've just referred to as</p> <p>13 for Tim's strengths, there's a huge gap between Tim and</p> <p>14 Phil. It was never a discussion whether it was going to</p> <p>15 be Tim as the next CEO from the board's perspective or</p> <p>16 Phil, because Phil was never in the discussion. The</p> <p>17 only time Phil's name ever came up in discussion for</p> <p>18 CEO, because of what I just mentioned in the</p> <p>19 qualifications, was emergency only.</p> <p>20 Q. The criticisms that you listed of Phil McHugh,</p> <p>21 are those set forth in writing anywhere?</p> <p>22 MR. CIOFFI: Objection to the form of the</p> <p>23 question. I don't believe he used the term</p> <p>24 "criticism."</p> <p>25 THE WITNESS: Those are -- those are</p>

<p>Page 192</p> <p>1 experiences that Tim -- that Phil does not have, 2 that Tim has, that the board needs against the 3 profile that the board developed with RHR, of who 4 the next CEO and what the skill sets of the next 5 CEO need to be, all right? I wasn't being critical 6 that -- of Phil in those areas. Phil didn't have 7 those skills, all right? And those skills were 8 defined by the board, all right? And those were 9 the skill sets the board was looking for, all 10 right?</p> <p>11 The fact that Phil hadn't developed those 12 skills isn't a criticism, all right. It's just, he 13 doesn't have those skill sets. And that's 14 paramount to what the board felt was necessary for 15 the next CEO to have.</p> <p>16 BY MR. SABA:</p> <p>17 Q. So let me rephrase my question. These skill 18 sets that you indicate Phil doesn't have, is that set 19 forth anywhere in writing that Phil does not have the 20 following skill sets?</p> <p>21 A. I think I've mentioned in discussions with -- 22 those are not set forth in writing that Phil was 23 deficient in this, this, and doesn't have these skills, 24 because he was never assessed for the CEO role. So 25 there was never a reason to step forth and say, as a</p>	<p>Page 194</p> <p>1 those -- for that skill set was Tim Spence, correct?</p> <p>2 A. At the direction of the board, correct.</p> <p>3 Q. With respect to the conversation that Bob 4 Shaffer had with Phil McHugh at the Inn at Perry's 5 Cabin, did Bob Shaffer inform you that he told Phil that 6 Carmichael wanted to leave in one to two years and 7 wanted McHugh to succeed him as president and CEO?</p> <p>8 A. Restate that question again.</p> <p>9 Q. My question is, I'm trying to understand what 10 Bob Shaffer communicated to you about his conversation 11 with Phil McHugh at the Inn of Perry's Cabin. Did he --</p> <p>12 A. That's different than what you just said. So 13 what he -- Bob's conversation back to me, he told me 14 Phil approached him and he did talk to Phil and he did 15 confirm that Phil was absolutely interested in 16 succeeding me in an emergency situation if the board 17 needed that, and that he would be willing to do that and 18 he'd like to do that. He confirmed that conversation. 19 Emergency successor, he wanted to do it and 20 willing to do it, and wanted to know if Bob would 21 support him, and Bob told me he told him absolutely, he 22 would support him. That's the conversation Bob had with 23 me.</p> <p>24 Q. Did Bob Shaffer ever tell you that he told 25 Phil that Greg Carmichael wanted Phil -- wanted to leave</p>
<p>Page 193</p> <p>1 CEO, you lack these skills. So therefore, you're not 2 going to be considered for the CEO. We don't have that 3 in writing, all right?</p> <p>4 Those skill sets -- that skill set was 5 developed by the board. At the end of the day, the only 6 executive that basically supported those skill sets or 7 had the qualifications was Tim Spence. That's who the 8 board was aligning with and believed unanimously 9 that was the right person. I never sat down with Phil 10 and said, you have deficiencies in all these areas. 11 You're never going to be the CEO of the company. We've 12 never had this conversation like that because it was 13 never warranted. Never necessary. He never came to me, 14 asking to be the CEO. He never told me he wanted to be 15 considered for the CEO. That might have prompted some 16 of that.</p> <p>17 I was always evaluating Phil against the job 18 he was doing and the skill sets necessary in the job he 19 was doing. I never evaluated him against the CEO 20 position. There was never a requirement to do that. 21 There was never an ask to do that. There was never an 22 assessment against Phil against the CEO profile. If 23 there was, those things would have been clearly 24 articulated.</p> <p>25 Q. The only person that was ever assessed for</p>	<p>Page 195</p> <p>1 in one to two years and wanted Phil to succeed him as 2 president and CEO?</p> <p>3 MR. CIOFFI: Objection. Asked and answered 4 three minutes ago.</p> <p>5 THE WITNESS: I shared with you the 6 conversation I had with Bob. It was not anything 7 like you just suggested it was at all.</p> <p>8 MR. SABA: Okay.</p> <p>9 THE WITNESS: No. The conversation -- I'm not 10 aware ever happened. It would have been 11 inconsistent with any of our conversations.</p> <p>12 BY MR. SABA:</p> <p>13 Q. Did Bob Shaffer ever tell you that he told 14 Phil McHugh that Tim Spence is not ready and that Tim 15 would be well served by observing Phil?</p> <p>16 A. Bob never said that to me.</p> <p>17 Q. You mentioned before that after the August 15, 18 2019, midyear review with Phil McHugh, you would have 19 reached out right away to Bob Shaffer; is that right?</p> <p>20 A. Yeah, he's in the office next door to me. We 21 come in early every day. I believe I circled right 22 around with him and said, yeah, I had a chance to talk 23 to Phil. He's definitely interested in emergency 24 successor. We want to put him on the list.</p> <p>25 Q. That's what you told Bob?</p>

<p>1 A. That's what I told Bob.</p> <p>2 Q. And did you have a subsequent conversation</p> <p>3 with Bob after he had the conversation with Phil at the</p> <p>4 Inn of Perry's Cabin?</p> <p>5 A. I think I answered that already.</p> <p>6 The conversation was with Bob, came back and said he</p> <p>7 talked to Phil, Phil wanted to understand if Bob Shaffer</p> <p>8 would support him, and Bob said he absolutely would. He</p> <p>9 wanted to confirm that it was -- that he would be</p> <p>10 considered and I was going to put him on the</p> <p>11 recommendation list to be considered for the emergency</p> <p>12 successor in the event the board needed an emergency</p> <p>13 successor.</p> <p>14 Q. And my -- I'm just trying to put out the time.</p> <p>15 A. I'm just trying to --</p> <p>16 Q. No, no. I understand. I'm just trying to</p> <p>17 understand the timing of that second conversation. When</p> <p>18 did that take place?</p> <p>19 A. Counsel, I believe that conversation took</p> <p>20 place shortly -- it may have taken place at Perry's</p> <p>21 Cabin before I left, or if it didn't it was very shortly</p> <p>22 after. I don't really recall, but it would have been in</p> <p>23 a very tight timeframe. After that conversation at</p> <p>24 Perry's Cabin, that while we were still there, or</p> <p>25 shortly the day after, two days after, whenever we got</p>	<p>Page 196</p> <p>1 you indicated there were three executives overseeing</p> <p>2 that operation of MB Financial. I think you identified</p> <p>3 Tim Spence, Lars Anderson, and Phil McHugh essentially,</p> <p>4 correct?</p> <p>5 A. Not the operation. The oversight for</p> <p>6 integration of that into our business. It was a large</p> <p>7 acquisition, a lot of moving parts. A lot of people had</p> <p>8 oversight responsibilities for different aspects of that</p> <p>9 integration. If you think about it, we have a regional</p> <p>10 structure that's being integrated into one of our</p> <p>11 largest regional opportunities. It's going to become</p> <p>12 one of our largest regions with this acquisition. Each</p> <p>13 line of business head had a responsibility for</p> <p>14 integrating their lines of business.</p> <p>15 We had a program management office set up that</p> <p>16 I believe Charlie Bradley ran that was overseeing the</p> <p>17 whole integration and kind of the glue and</p> <p>18 responsibility for keeping all the trains moving in the</p> <p>19 right direction. And then a line of businesses, the</p> <p>20 commercial will be responsible for integrating the</p> <p>21 commercial business, the consumer for the consumer</p> <p>22 business. As I mentioned before, the consumer went</p> <p>23 really well. Commercial struggled.</p> <p>24 But Phil had responsibility for the regions at</p> <p>25 the time, so he would have a role to play and contribute</p>
<p>Page 197</p> <p>1 back, he would have came in and had the conversation</p> <p>2 with me.</p> <p>3 But he absolutely said that Phil had come and</p> <p>4 spoke with him during that retreat, and strategy --</p> <p>5 strategy planning session, and asked about that</p> <p>6 conversation he had with me. Phil wanted confirmation</p> <p>7 that he heard it right.</p> <p>8 Q. The MB Financial acquisition, that closed in</p> <p>9 May of 2019; is that correct?</p> <p>10 A. Yeah. It's a long close process with the</p> <p>11 regulators. So when we announced it -- when we</p> <p>12 announced the transaction that we were buying them and</p> <p>13 when it closed would probably be close to 10 months</p> <p>14 probably, in that transaction. I think that's somewhere</p> <p>15 -- yeah, that would probably be about the right</p> <p>16 timeframe.</p> <p>17 Q. You announced sometime in May of 2018; does</p> <p>18 that sound correct?</p> <p>19 A. Yeah. So yeah, that would -- that fits.</p> <p>20 Q. And you got regulatory approval in March of</p> <p>21 2019; does that sound right?</p> <p>22 A. That would be about the timeline that we were</p> <p>23 dealing with this. It was approaching a year. I don't</p> <p>24 think it quite got to a year or not.</p> <p>25 Q. All right. After that deal closed, I think</p>	<p>Page 199</p> <p>1 to that integration, and if something wasn't going well,</p> <p>2 I would expect Phil to get engaged with that. And I</p> <p>3 believe I probably had directed Phil and would have</p> <p>4 expected Phil to be engaged in that acquisition on</p> <p>5 things that may not have been going as smoothly as we'd</p> <p>6 like.</p> <p>7 Q. What were the problems with that integration?</p> <p>8 A. Different commercial core middle markets.</p> <p>9 They were a core middle market, small business bank.</p> <p>10 They weren't a large core bank. They had different</p> <p>11 credit processes, different relationship management</p> <p>12 structure, and trying to fit that into Fifth Third's</p> <p>13 structure, they -- their processes were different than</p> <p>14 our processes. They actually had, I thought, some very</p> <p>15 good process-related core middle market, onboarding, how</p> <p>16 they managed deposits, how they basically handled</p> <p>17 credit, credit decisions and the credit process, that I</p> <p>18 thought we could learn from. They were a very good core</p> <p>19 middle market bank, and that was the one area that when</p> <p>20 we put the two together we had some I'll call it</p> <p>21 dysfunctional performance there that needed to be</p> <p>22 addressed, and we needed to meld the two processes</p> <p>23 together and get the best process together between the</p> <p>24 two companies, and that just took some work to get that</p> <p>25 done. Consumer was a lot easier. Wealth was very easy.</p>

<p style="text-align: right;">Page 200</p> <p>1 It was the commercial core middle market bank that was a 2 little more challenging. 3 Q. And what about treasury management? 4 A. Well, treasury management was part of the 5 commercial bank. All right? Think about it. So that's 6 part of the commercial challenge that we had. They had 7 a very high touch, customized treasury management. They 8 would do a lot of one-off things to support various 9 customers, and we had a more vanilla platform. 10 So try and take all those customizations and 11 basically lay them on top of our treasury management 12 platform, which wasn't as customized, in trying to get 13 either customers were going to conform to our standard 14 vanilla, or we were going to have to make modifications, 15 which we didn't want to really do because that 16 creates -- one often creates regulatory risk and other 17 risks, trying to make those changes to our platform. 18 So we had to vet through those challenges. 19 That was part of the commercial bank. It was credit and 20 treasury management, and the relationship with managers 21 themselves and our expectations there. Those three 22 things were what drove most of the clunkiness in the 23 integration. 24 Q. And ultimately, between Tim Spence, Lars, and 25 Phil, Phil was the guy who was needed to fix those</p>	<p style="text-align: right;">Page 202</p> <p>1 at 10:51 a.m., from Bob Shaffer. 2 A. Okay, I see that. 3 Q. Heading to Chicago for some productive 4 conversations and problem resolution. I'll try to solve 5 the credit issues while I'm up there as well. 6 And Frank Forrest responds, you need to do 7 that. We need one capable executive, not three 8 overseeing MB. That would be a great start. Make it 9 happen. 10 Bob Shaffer responds, I already did. I met 11 with Greg earlier this week and told him Phil is the 12 guy, and that Lars needs to work through Phil when 13 necessary in Chicago. 14 Do you see that? 15 A. I do see that. 16 Q. Do you recall having that conversation with 17 Bob Shaffer when he told you Phil's the guy to fix the 18 problems at MB Financial? 19 A. I don't necessarily recall a conversation with 20 Bob in these texts, but generally, this is correct. I 21 mean, I would have said, you know, there was a lot of 22 pushing and shoving. There's a lot of different views 23 on the commercial core middle market credit side, how to 24 do it, who should do it with authorities. Phil has a 25 commercial core middle market background. He's got</p>
<p style="text-align: right;">Page 201</p> <p>1 problems, correct? 2 A. Phil was one of the individuals asked to get 3 involved and help resolve those issues. So I absolutely 4 would have expected Tim to -- I'm sorry -- Phil to be up 5 there on point. He's the regional leader, working with 6 that bigger market, kind of being a traffic cop on some 7 of these issues. I mean, some of these things needed 8 someone to break the ties, so to speak. So I expected 9 Phil to get involved. I expected Tim to be heavily 10 involved in that, on the consumer side, which he had 11 responsibilities for, which he was. 12 And then, Lars Anderson, this wasn't really 13 Lars's strength here, I think needed some support from 14 Phil. Once again, what you would expect from someone 15 leading the regions, that they would be involved in 16 this. 17 (Exhibit 18 is marked for identification.) 18 BY MR. SABA: 19 Q. Mr. Carmichael, I've handed you Exhibit 20 Number 18, which is Bates stamp Fifth Third McHugh 21 0213203. 22 A. I see that. 23 Q. I'll represent to you this is a text message 24 exchange between Frank Forrest and Bob Shaffer. If I 25 can refer you to the text message on October 11, 2019,</p>	<p style="text-align: right;">Page 203</p> <p>1 responsibility for the region, and I wanted him to go up 2 there and break the tie, so to speak, and finalize how 3 we're going to get it done. 4 Lars had his opinion. Other people may have 5 had their opinion. The chief credit officer, Richard 6 Stein, had his opinion on how he wanted things to work. 7 At some point we got to put these two organizations 8 together and someone's going to have to break the ties 9 and make final decisions, and I said let's get -- Phil 10 runs the regions, get him up there. He has a commercial 11 background. So yeah, that's absolutely consistent with 12 what I would have said. I don't know how I said it like 13 that, but that's what I would have did. 14 Q. And over time, Phil was able to resolve those 15 issues, correct? 16 A. The issues got resolved over time, yes. I'm 17 not going to portray that Phil solved all those issues, 18 but I asked someone to get up there and do what I just 19 described, and requested, and over time these issues got 20 resolved. 21 I will tell you this went on for well over a 22 year and a half. This was not a quick fix. This wasn't 23 something that got done quickly. This took time to get 24 this resolved. 25 (Exhibit 19 is marked for identification.)</p>

<p>Page 204</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Carmichael, I've handed you what's been</p> <p>3 marked as Exhibit Number 19, Fifth Third McHugh 005483</p> <p>4 through Fifth Third McHugh 005515. Can you identify</p> <p>5 this document for me, please?</p> <p>6 A. It appears to be the December 2018 talent</p> <p>7 management update that I would have presented. If this</p> <p>8 is the final copy, it would have been the final one I</p> <p>9 presented, but I assume I'm looking at the final</p> <p>10 version. I can't -- there's no draft on it, so I assume</p> <p>11 it's the final version.</p> <p>12 Q. And you were saying you would have presented</p> <p>13 this to the board; is that correct?</p> <p>14 A. In our December meeting, correct.</p> <p>15 Q. And do you recall when you would have gotten</p> <p>16 involved in preparation of the December 2018 talent</p> <p>17 deck?</p> <p>18 A. Typically, this process is facilitated and</p> <p>19 administered by the human capital group. Bob Shaffer's</p> <p>20 organization at this timeframe would have been Bob</p> <p>21 Shaffer would be leading this. I would -- I would get</p> <p>22 involved as we -- we approached the December timeframe.</p> <p>23 Whether that's two or three weeks, Bob and I would -- I</p> <p>24 start to see drafts, potential drafts of this document.</p> <p>25 We'd just be, you know, making sure we're in sync about</p>	<p>Page 206</p> <p>1 MR. SABA: That's fine. Go off the record.</p> <p>2 VIDEOGRAPHER: Time is 3:51 p.m.</p> <p>3 (A recess was taken from 3:51 to 4:07.)</p> <p>4 VIDEOGRAPHER: Time is 4:07 p.m. We're back</p> <p>5 on the record.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Mr. Carmichael, you previously indicated that</p> <p>8 you communicated to Phil McHugh that you were -- to see</p> <p>9 if he was interested in being the emergency successor of</p> <p>10 you as president and CEO because of some personal issues</p> <p>11 you were having, correct?</p> <p>12 MR. CIOFFI: Objection. Mischaracterizes his</p> <p>13 testimony. But you may answer.</p> <p>14 THE WITNESS: I shared with Phil that I had a</p> <p>15 personal situation that may require me to step out,</p> <p>16 step down earlier than I initially anticipated. I</p> <p>17 didn't elaborate on what those issues might be, and</p> <p>18 I asked him if he wanted to be considered if the</p> <p>19 board was moving forward with the emergency</p> <p>20 successor, which they could, did he want to be</p> <p>21 considered and I wanted to make sure that he was</p> <p>22 interested before I put him on the list in the</p> <p>23 December talent management discussion.</p> <p>24 BY MR. SABA:</p> <p>25 Q. This personal issue that you did not discuss</p>
<p>Page 205</p> <p>1 the message we're going to communicate to the board and</p> <p>2 the consistency of the messaging. Also take into</p> <p>3 consideration conversations that have been had</p> <p>4 throughout the years. So yeah, I would have -- I'd</p> <p>5 probably see the draft of this sometime approaching this</p> <p>6 timeframe.</p> <p>7 Q. And would you review the document in detail?</p> <p>8 A. I would review the final -- I would review the</p> <p>9 draft and final, as we get -- as we get towards the</p> <p>10 timeframe that we're going to present this, I would be</p> <p>11 very, very close to the data that's in this deck. I</p> <p>12 wouldn't be in earlier revisions of it or necessarily</p> <p>13 seen earlier drafts or something of this nature, if</p> <p>14 that's your question.</p> <p>15 Q. I'm more asking about this particular</p> <p>16 document. You would review this document in detail,</p> <p>17 correct, the final version?</p> <p>18 A. Yes, absolutely.</p> <p>19 Q. And would you make changes to the talent deck?</p> <p>20 A. If I thought something was an error or</p> <p>21 inconsistent with our beliefs or conversations or the</p> <p>22 way we viewed something, absolutely.</p> <p>23 MR. CIOFFI: Counsel, while you're looking for</p> <p>24 your next document, let's take a five-minute break</p> <p>25 and come back.</p>	<p>Page 207</p> <p>1 with Phil that would have caused you to step down</p> <p>2 earlier than anticipated, how quickly was that going to</p> <p>3 have to have you step down?</p> <p>4 A. I'm not going to answer that question. It's</p> <p>5 personal. So I'm not going to --</p> <p>6 Q. I'm not asking what the personal issue is; I'm</p> <p>7 asking what the timing would be.</p> <p>8 A. I don't know what the timing would be; it's</p> <p>9 personal.</p> <p>10 Q. The timing issue is personal?</p> <p>11 A. It's related to the issues. Related to the</p> <p>12 situation.</p> <p>13 Q. Well, they're relevant to this case, sir,</p> <p>14 because you're making it relevant to this case, based</p> <p>15 upon the heart of what you're disclosing here.</p> <p>16 A. I don't know how it's relevant to the case</p> <p>17 when because I'm going to put him as emergency</p> <p>18 successor, and it's going to be up to the board if they</p> <p>19 needed an emergency successor. My timeline, whether I'd</p> <p>20 step down or have to step down or not, is irrelevant to</p> <p>21 the process. The process is that we needed to identify</p> <p>22 an emergency successor, which we do anyway. It was part</p> <p>23 of the process that we were going to forthwith, but I</p> <p>24 was heightened concern because I might have to step down</p> <p>25 sooner than I was anticipating, that may facilitate the</p>

<p style="text-align: right;">Page 208</p> <p>1 board assessing whether they wanted to put an emergency</p> <p>2 successor in place.</p> <p>3 Q. And how is --</p> <p>4 A. As far as that timing goes, I can't answer the</p> <p>5 question because it was -- it was a difficult situation.</p> <p>6 Q. You're saying you won't answer the question</p> <p>7 because it's a personal issue?</p> <p>8 A. No, I said I can't answer the question. I</p> <p>9 don't know. I didn't have a -- I didn't know exactly.</p> <p>10 Q. How soon could it possibly have been?</p> <p>11 A. There was a lot going on.</p> <p>12 Q. What's the soonest it could have been?</p> <p>13 A. I'm not going to speculate.</p> <p>14 Q. Do you know?</p> <p>15 A. I do not know.</p> <p>16 Q. Was it a health issue?</p> <p>17 A. I said it's a personal-related issue. I'm not</p> <p>18 going to go into any more detail than that. It's not</p> <p>19 relevant to the case. The case is, there's a potential</p> <p>20 situation where I may have to step down.</p> <p>21 Q. Why would you have to step down?</p> <p>22 A. I think I've answered that question multiple</p> <p>23 times.</p> <p>24 Q. No, you didn't.</p> <p>25 A. Yes, I did.</p>	<p style="text-align: right;">Page 210</p> <p>1 just part of the process, and he asked, as he</p> <p>2 testified, if Phil McHugh wanted to be part of that</p> <p>3 process. That's all.</p> <p>4 MR. SABA: I understand what his testimony is.</p> <p>5 MR. CIOFFI: It's nothing to do with his</p> <p>6 situation.</p> <p>7 MR. SABA: It does in terms of it's a</p> <p>8 contradiction to what the other testimony is and</p> <p>9 what happened during that conversation. He's</p> <p>10 bringing it up for justification for why he made</p> <p>11 that statement. That's why it's in dispute.</p> <p>12 That's why we're entitled to find out what is his</p> <p>13 basis for saying that he would have to step out</p> <p>14 earlier than anticipated.</p> <p>15 THE WITNESS: I never said I would. I said</p> <p>16 there's a chance I might have to. But as part of</p> <p>17 our succession process -- which I was getting ready</p> <p>18 to present in December -- I would have asked Phil</p> <p>19 regardless of my situation if he was interested in</p> <p>20 stepping in as emergency successor. I thought he</p> <p>21 should be on that list.</p> <p>22 He was going to get that question no matter</p> <p>23 what in that timeframe. I did highlight that there</p> <p>24 may be a need for me to step down sooner, so I</p> <p>25 wanted to make sure he really wanted to step in</p>
<p style="text-align: right;">Page 209</p> <p>1 Q. You didn't explain why this personal issue</p> <p>2 would cause you to have to step down.</p> <p>3 MR. CIOFFI: Counsel, that's not relevant to</p> <p>4 the case. What's relevant to the case is the</p> <p>5 emergency successor. The emergency successor is</p> <p>6 there because emergencies could happen any day. He</p> <p>7 could get hit by a bus, et cetera. It's not</p> <p>8 outside of the process of the board. That's what</p> <p>9 he's saying. It has nothing to do with his</p> <p>10 personal situation.</p> <p>11 MR. SABA: It is relevant to the case --</p> <p>12 MR. CIOFFI: How?</p> <p>13 MR. SABA: -- because he's bringing it up as a</p> <p>14 justification for why he said he had a certain</p> <p>15 conversation with Phil McHugh which is completely</p> <p>16 disputed by the plaintiff in terms of what was said</p> <p>17 during that conversation. So the fact that he's</p> <p>18 bringing up an issue to justify what he said makes</p> <p>19 it relevant to this case. He's making it relevant</p> <p>20 to this case. We --</p> <p>21 MR. CIOFFI: No. The emergency successor is</p> <p>22 part of a normal -- this is what he testified to --</p> <p>23 the normal process of succession planning. It has</p> <p>24 nothing to do with whether he has a personal issue</p> <p>25 or a health issue or might get hit by a bus. It's</p>	<p style="text-align: right;">Page 211</p> <p>1 this position and would consider it. All right? I</p> <p>2 do not know what my timing might be. All right?</p> <p>3 It could have been days, it could have been months.</p> <p>4 It ended up being never. By the way, I never did</p> <p>5 step down early. The process went forth, there was</p> <p>6 no need for an emergency successor play. I would</p> <p>7 have had the conversation anyway. All right? That</p> <p>8 I might need to step down was just part of a</p> <p>9 discussion, but not anything different that would</p> <p>10 have drove a different outcome of the process.</p> <p>11 That's my point.</p> <p>12 BY MR. SABA:</p> <p>13 Q. During Tim Spence's midyear review in 2019,</p> <p>14 did you ask him if he wanted to be an emergency</p> <p>15 successor for president and CEO?</p> <p>16 A. No, I didn't have him on the emergency</p> <p>17 successor. I wasn't putting him on the emergency</p> <p>18 successor list, so I did not ask him that question.</p> <p>19 Q. Why not?</p> <p>20 A. Because Tim was identified by the board, in</p> <p>21 conversation I had with the board, and I viewed Tim as</p> <p>22 ready to be the president within a year and a CEO a</p> <p>23 couple years. All right? So I wouldn't have a person</p> <p>24 that's lining up to be, in the board's eyes, the</p> <p>25 potential next CEO of the company and president, and</p>

<p>1 then have him as an emergency.</p> <p>2 The emergency person, by design, is someone</p> <p>3 that can hold the bank together, keep the lights on,</p> <p>4 keep the trains moving. The fact that Tim was on this</p> <p>5 page -- and on the talent management deck in 2019, in</p> <p>6 succession management, as a potential CEO/president</p> <p>7 replacement, president in one year and CEO in two to</p> <p>8 three years, I believe, or something of that nature -- I</p> <p>9 already had him on the list.</p> <p>10 By default, he's on the list. The board looks</p> <p>11 at that and will make a determination between that</p> <p>12 situation with Tim Spence's readiness, in my view, okay,</p> <p>13 they still make the final call, and if they need an</p> <p>14 emergency successor. That's the way the process works</p> <p>15 in corporate America.</p> <p>16 (Exhibit 20 is marked for identification.)</p> <p>17 (Exhibit 21 is marked for identification.)</p> <p>18 MR. CIOFFI: Counsel, are you marking the</p> <p>19 draft of 11/07 as 20 and 10/25?</p> <p>20 MR. SABA: It's 21. Yes, that's correct.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Mr. Carmichael, you've been handed two</p> <p>23 exhibits. First is Exhibit 20, Bates stamp Fifth Third</p> <p>24 McHugh 006714 through Fifth Third McHugh 006761. Do you</p> <p>25 see that?</p>	<p>Page 212</p> <p>1 talent deck draft from October 25, 2019.</p> <p>2 MR. CIOFFI: Well, he said he's never seen it</p> <p>3 before. He didn't identify it, he read the first</p> <p>4 page of it.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Are you able to identify what Fifth Third</p> <p>7 McHugh 006968 appears to be?</p> <p>8 A. Appears to be an erroneous draft of a talent</p> <p>9 management card.</p> <p>10 Q. For Phil McHugh; is that correct?</p> <p>11 A. For Phil McHugh. I've never seen it before,</p> <p>12 but looking at the data here it's obviously nothing I've</p> <p>13 ever seen, I have no knowledge.</p> <p>14 Q. If I could also refer you to Exhibit 19. If I</p> <p>15 could refer you to Exhibit Fifth Third McHugh 005507.</p> <p>16 A. Okay. I'm there.</p> <p>17 Q. Fifth Third McHugh 005507, the talent card for</p> <p>18 2018, makes no reference to Phil McHugh's age, does it?</p> <p>19 MR. CIOFFI: Objection, counsel. No one's</p> <p>20 identified 005507 as a talent card. It's not what</p> <p>21 it is. If you look at 5502, you'll see what it is.</p> <p>22 You're misrepresenting it.</p> <p>23 THE WITNESS: This doesn't look like --</p> <p>24 MR. SABA: And would you -- let's go back</p> <p>25 then. Fifth Third McHugh 005507, you would not</p>
<p>Page 213</p> <p>1 A. I do.</p> <p>2 Q. Can you identify that document for me, please?</p> <p>3 A. That would have been a draft 11/07/19, board</p> <p>4 of directors executive talent management and succession</p> <p>5 plan update.</p> <p>6 Q. You've also been handed Exhibit Number 21,</p> <p>7 which is Fifth Third McHugh 006943 through Fifth Third</p> <p>8 McHugh 006989. Can you identify that for me, please?</p> <p>9 A. Appears to be a draft dated 10/25/19. Fifth</p> <p>10 Third Bank executive talent management and succession</p> <p>11 plan update.</p> <p>12 Q. Referring first to Exhibit Number 21. Have</p> <p>13 you ever seen Exhibit Number 21 before?</p> <p>14 A. No, I've never seen this document.</p> <p>15 Q. Do you know who prepared Exhibit Number 21?</p> <p>16 A. I do not.</p> <p>17 Q. I'll refer you to Fifth Third McHugh 006968.</p> <p>18 This is on Exhibit Number 21. Can you identify that?</p> <p>19 A. 6968?</p> <p>20 Q. That's correct. Can you identify that for me,</p> <p>21 please?</p> <p>22 MR. CIOFFI: Counsel, objection. He said he's</p> <p>23 never seen this document before. How can he</p> <p>24 identify it?</p> <p>25 MR. SABA: He already identified it as the</p>	<p>Page 215</p> <p>1 recognize that as a talent card?</p> <p>2 THE WITNESS: I'm not saying it's -- to be</p> <p>3 honest, Counsel, I --</p> <p>4 MR. CIOFFI: It's an individual development</p> <p>5 plan, if you look at 5502. There's no reason for</p> <p>6 the record to be confused.</p> <p>7 BY MR. SABA:</p> <p>8 Q. Have you ever heard these referred to as</p> <p>9 talent cards as part of the talent deck, Mr. Carmichael?</p> <p>10 A. Individual development plans. I'm just going</p> <p>11 back -- if this is the deck I presented to the board at</p> <p>12 the 2018 talent and management discussion with the</p> <p>13 board, then we could refer to this as a talent card</p> <p>14 potentially, yes. We could.</p> <p>15 Q. Okay.</p> <p>16 A. I just don't know if we did. I'll just be</p> <p>17 honest with you, I just don't know. I go through a ton</p> <p>18 of information a day as a CEO, and this is five years</p> <p>19 old.</p> <p>20 Q. Going back to my question, comparing Fifth</p> <p>21 Third McHugh 005507 from the 2018 talent deck to the</p> <p>22 draft we see for October 25, 2019, of the 2019 talent</p> <p>23 deck, do you see that they --</p> <p>24 A. Is that 6968 you're referring to?</p> <p>25 Q. That is correct, yes.</p>

<p>1 A. Okay. Thank you.</p> <p>2 Q. Do you see they've added Phil McHugh's age to</p> <p>3 that talent card; is that correct?</p> <p>4 A. Apparently, age has been added, yes. I see</p> <p>5 that. It's been added to all the talent cards, not just</p> <p>6 Phil McHugh's, based on this --</p> <p>7 Q. Correct. Correct. Do you know whose decision</p> <p>8 it was to add ages to the talent cards?</p> <p>9 A. This process is facilitated -- these documents</p> <p>10 are facilitated by the human capital group. I would</p> <p>11 have no clue why -- but age is something we've got to</p> <p>12 report in the proxy. I'm not sure if they were lining</p> <p>13 in for the proxy. I don't know why it was added. I</p> <p>14 didn't request it and I know the board didn't request</p> <p>15 it. But it could have been something they felt</p> <p>16 necessary because this information shows up in the</p> <p>17 proxy. I don't know how it came about.</p> <p>18 Q. Under the potential next positions for Phil</p> <p>19 McHugh, it lists president ready now, CEO one to two</p> <p>20 years. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you have any idea where that information</p> <p>23 would have come from?</p> <p>24 A. Absolutely not. It's inconsistent with -- if</p> <p>25 you look above, potential, moderate potential. You know</p>	<p>Page 216</p> <p>1 Q. Staying with Exhibit Number 21, referring you</p> <p>2 to Fifth Third McHugh 006971, can you identify that</p> <p>3 document for me, please?</p> <p>4 A. Which number again, please?</p> <p>5 Q. 6971.</p> <p>6 MR. CIOFFI: Same objection. He's already</p> <p>7 testified he's never seen it before.</p> <p>8 THE WITNESS: Appears to be a talent card for</p> <p>9 Tim Spence. Once again, I've never seen it before.</p> <p>10 BY MR. SABA:</p> <p>11 Q. Under potential next positions, it lists head</p> <p>12 of regional banking two plus years, head of commercial</p> <p>13 banking years two-plus years. Do you see that?</p> <p>14 A. I can see that.</p> <p>15 Q. Do you have any idea where that information</p> <p>16 would have come from?</p> <p>17 A. Counsel, I've testified I've never seen this</p> <p>18 document and I don't know who put it together. So I</p> <p>19 don't know where the information came from.</p> <p>20 Q. Staying with Exhibit 21. If you could turn to</p> <p>21 Fifth Third McHugh 006955.</p> <p>22 A. 6955, I have in front of me.</p> <p>23 Q. Have you ever seen this document before?</p> <p>24 A. I've never seen this document before. I've</p> <p>25 said that multiple times before, I've never seen this</p>
<p>Page 217</p> <p>1 someone's not going to be a president/CEO of this</p> <p>2 company when they're at this level already if they're</p> <p>3 moderate potential. That's not going to happen.</p> <p>4 So there's inconsistencies in this deck. I've</p> <p>5 never seen it, I don't know who put it together, I don't</p> <p>6 know why it's there. It's inconsistent with any</p> <p>7 conversation I've ever had.</p> <p>8 Q. You do recognize that that's consistent with</p> <p>9 what Phil McHugh says that you told him during his</p> <p>10 August 15, 2019, midyear review; is that right?</p> <p>11 A. I never told Phil McHugh that, so I have no</p> <p>12 clue what Phil McHugh thinks was said. But that was</p> <p>13 never said. It was emergency successor only. So I</p> <p>14 can't help a mistake that was made by somebody in the</p> <p>15 organization. I have no clue how it was done.</p> <p>16 Inconsistent with moderate potential.</p> <p>17 Q. With respect to leader capabilities for Phil</p> <p>18 McHugh, each one is listed as a strength; do you see</p> <p>19 that?</p> <p>20 A. I do.</p> <p>21 Q. Do you have an idea where that information</p> <p>22 came from?</p> <p>23 A. I have never seen this draft. I've already</p> <p>24 answered the question. I don't know who put it</p> <p>25 together. I've never seen this draft.</p>	<p>Page 219</p> <p>1 document.</p> <p>2 Q. Have you ever seen this breakdown of workforce</p> <p>3 of the future five generations in the workplace of Fifth</p> <p>4 Third Bank?</p> <p>5 A. I don't recall seeing this. There's a lot of</p> <p>6 information in this deck that the HR group puts</p> <p>7 together. I don't necessarily recall visiting this page</p> <p>8 five years ago -- four years ago.</p> <p>9 Q. Staying with Exhibit 21, Fifth Third McHugh --</p> <p>10 if you turn to Fifth Third McHugh 006977.</p> <p>11 A. I'm there.</p> <p>12 Q. Can you identify what Fifth Third McHugh</p> <p>13 006977 and 006978 are?</p> <p>14 A. Appears to be the first -- cover page and the</p> <p>15 second page of the CEO succession plan according to the</p> <p>16 draft document I've never seen.</p> <p>17 Q. And 6978 lists Phil McHugh as the first</p> <p>18 successor for CEO in one to two years; is that correct?</p> <p>19 A. That's what this document states.</p> <p>20 Q. Followed by Tim Spence in two-plus years; is</p> <p>21 that right?</p> <p>22 A. That's what the document says.</p> <p>23 Q. And then, under emergency successions, Tayfun</p> <p>24 Tuzun and then Phil McHugh. Is that right?</p> <p>25 A. That's what it says.</p>

<p>Page 220</p> <p>1 Q. Do you have any idea where this information</p> <p>2 came from?</p> <p>3 A. I do not.</p> <p>4 Q. Again, this would be consistent with what Phil</p> <p>5 McHugh indicates you said to him on August 15, 2019; is</p> <p>6 that right?</p> <p>7 A. I've never seen this draft and it's</p> <p>8 inconsistent with what I said to Phil McHugh in my eyes</p> <p>9 and what I know was said and that Bob Shaffer would</p> <p>10 confer. So I've never seen this document. I don't know</p> <p>11 how this information got here. It's not consistent with</p> <p>12 what we were talking about. It's not consistent with</p> <p>13 what we communicated.</p> <p>14 Q. It's consistent with what Phil McHugh said you</p> <p>15 said, correct?</p> <p>16 A. I don't control what Phil McHugh wants to say.</p> <p>17 Q. Were you having any conversations with Bob</p> <p>18 Shaffer about the talent decks in October of 2019?</p> <p>19 A. I don't get involved in the process,</p> <p>20 literally, until weeks prior to -- looking at the last</p> <p>21 couple drafts, we would get in sync on. So I wouldn't</p> <p>22 have any reason to have a conversation with Bob in that</p> <p>23 timeframe. But I don't recall every conversation to my</p> <p>24 head of HR who sits next to me, but I don't believe any</p> <p>25 conversation usually takes place at that point in time.</p>	<p>Page 222</p> <p>1 Q. Would that have been a key focus area for Phil</p> <p>2 McHugh in 2019?</p> <p>3 A. Not for Phil McHugh, but for a president would</p> <p>4 have been. But it would have not been for Phil McHugh.</p> <p>5 As I said, this document is totally inconsistent,</p> <p>6 erroneous, inconsistencies in it, so I don't know who</p> <p>7 did this or how it came about.</p> <p>8 Q. Referring you to Fifth Third McHugh 006742.</p> <p>9 That's the talent card for Tim Spence; is that correct?</p> <p>10 A. A draft talent card that I've never seen.</p> <p>11 Q. And that continues to list Tim Spence as</p> <p>12 potential next positions, head of regional banking,</p> <p>13 two-plus years. Head of commercial banking, two plus</p> <p>14 years. Is that right?</p> <p>15 A. Apparently so. I didn't put it in there,</p> <p>16 so...</p> <p>17 Q. And it lists under, be a great coach,</p> <p>18 effective; is that right? Under leader capabilities on</p> <p>19 the right-hand side; do you see that?</p> <p>20 A. Yeah, I see that. But I didn't put it in</p> <p>21 there. I don't know where this information came from.</p> <p>22 Why don't you show me the final one, that would be more</p> <p>23 clear. I did see that.</p> <p>24 Q. If you could turn to Fifth Third McHugh</p> <p>25 006748. That is the November 7th version of the CEO</p>
<p>Page 221</p> <p>1 I couldn't say with ultimate certainty, but no, I</p> <p>2 wouldn't think so.</p> <p>3 Q. Referring you to Exhibit 20. And again,</p> <p>4 Exhibit 20's the November 7, 2019, draft of the talent</p> <p>5 deck?</p> <p>6 A. I see that.</p> <p>7 Q. Have you ever seen this document before?</p> <p>8 A. I got to look through it. No, I've never seen</p> <p>9 this document before.</p> <p>10 Q. Referring to Fifth Third McHugh 006739, can</p> <p>11 you turn to that page? This, again, is the talent card</p> <p>12 for Phil McHugh for November 7, 2019; is that right?</p> <p>13 A. It's a draft that I've never seen before,</p> <p>14 nothing I agreed with or would support, and it's</p> <p>15 inconsistent, again, with moderate potential in</p> <p>16 president, so.</p> <p>17 Q. As you point out, it continues to list Phil</p> <p>18 McHugh as under potential next positions, president,</p> <p>19 ready now, CEO, one to two years; is that right?</p> <p>20 A. Appears to be so in this draft.</p> <p>21 Q. Under -- under key focus areas, do you see</p> <p>22 that box? It says exposure to certain key stakeholders,</p> <p>23 example investors, earnings call, and rating agencies;</p> <p>24 is that right?</p> <p>25 A. I see that.</p>	<p>Page 223</p> <p>1 succession plan; is that correct?</p> <p>2 A. Appears so.</p> <p>3 Q. And that continues to list Phil McHugh as the</p> <p>4 next CEO one to two years, followed by Tim Spence, two</p> <p>5 plus years. And then -- do you see that?</p> <p>6 A. I see it on this page, yes.</p> <p>7 Q. And then emergency CEO lists Tuzun Tayfun and</p> <p>8 Phil McHugh; is that right?</p> <p>9 A. Correct.</p> <p>10 (Exhibit 22 is marked for identification.)</p> <p>11 BY MR. SABA:</p> <p>12 Q. Mr. Carmichael, you've been handed what's been</p> <p>13 marked as Exhibit Number 22, Fifth Third McHugh 006886</p> <p>14 through Fifth Third McHugh 006940. Can you identify</p> <p>15 that for me, please?</p> <p>16 A. Appears to be another draft of the board of</p> <p>17 directors executive talent management and succession</p> <p>18 plan update.</p> <p>19 Q. Have you ever seen this document before?</p> <p>20 A. I cannot tell you if I've seen this draft at</p> <p>21 this point. If this draft was one before that was</p> <p>22 presented to me or a couple before presented to me, I</p> <p>23 don't know. But what I do know is the data starts to</p> <p>24 look consistent with my conversations and my beliefs,</p> <p>25 and what I was planning to present to the board of</p>

<p>1 directors.</p> <p>2 So the data is lining up with how I would</p> <p>3 think about the opportunities in the conversations I've</p> <p>4 had, and what I was promoting -- putting forth based on</p> <p>5 the board's expectation and the emergency succession</p> <p>6 plan then has -- now has Phil McHugh and now has Tim</p> <p>7 Spence in the right positions, so I could have seen this</p> <p>8 draft, I can't say for sure. But the data is</p> <p>9 directionally now correct.</p> <p>10 Q. And so referring to -- on Exhibit Number 22,</p> <p>11 Fifth Third McHugh 006918, that --</p> <p>12 A. Hang on. Hang on. 69 -- okay. Yes, I'm</p> <p>13 there.</p> <p>14 Q. That is the talent card for Phil McHugh; is</p> <p>15 that correct?</p> <p>16 A. I can't recall -- it's a talent card for Phil</p> <p>17 McHugh on this draft. I don't have any -- and I</p> <p>18 wouldn't take exception in potential positions or as I</p> <p>19 was thinking about Phil, and as I wanted to present</p> <p>20 during the talent management discussion to the board.</p> <p>21 That data is now correct. The leader capabilities, I</p> <p>22 can't recall if that's correct or not, but the potential</p> <p>23 in next positions are correct on this draft. And so are</p> <p>24 the key focus areas.</p> <p>25 Q. And so it lists for potential next positions,</p>	<p>Page 224</p> <p>1 expectations were for these roles in those earlier</p> <p>2 drafts. I never saw them.</p> <p>3 Q. If you turn to Fifth Third McHugh 006921.</p> <p>4 A. Okay.</p> <p>5 Q. That's a talent card for Tim Spence; is that</p> <p>6 right?</p> <p>7 A. That is correct.</p> <p>8 Q. And now, on his talent card, the potential</p> <p>9 next position has been changed from head of regional</p> <p>10 banking two plus years, head of commercial banking two</p> <p>11 plus years, to president, COO one year, CEO two years.</p> <p>12 Is that right?</p> <p>13 A. That's what the document says.</p> <p>14 Q. This also modified this category of be a great</p> <p>15 coach from effective to strength. Is that right?</p> <p>16 A. That's what the document states.</p> <p>17 Q. Do you know who made these changes?</p> <p>18 MR. CIOFFI: Objection; asked and answered.</p> <p>19 You may answer.</p> <p>20 THE WITNESS: To be honest with you, I do not</p> <p>21 know -- did Bob make that? Did I tell him to make</p> <p>22 that change? I'm not sure I saw this draft.</p> <p>23 You're asking me about drafts. There's just going</p> <p>24 to be a litany of drafts that get prepared and</p> <p>25 circulated before I see it. I don't know what</p>
<p>Page 225</p> <p>1 head of middle market banking, ready now. What did you</p> <p>2 mean by that?</p> <p>3 A. What it says, head of middle market banking,</p> <p>4 ready now.</p> <p>5 Q. And would that have made him the head of the</p> <p>6 consumer bank?</p> <p>7 A. Head of middle market banking, would that make</p> <p>8 him head of the consumer banking? No.</p> <p>9 Q. No, it wouldn't, right?</p> <p>10 A. No. That would not make him head of consumer</p> <p>11 bank at this point, no. The word potential's important</p> <p>12 here, because this is a potential position, next</p> <p>13 position for Phil. Not necessarily the only</p> <p>14 opportunity. It's one identified as a potential.</p> <p>15 Q. Do you know who changed the information on</p> <p>16 Phil McHugh's talent card from the November 7th version</p> <p>17 of the talent deck?</p> <p>18 A. Counsel, I have no idea who put this</p> <p>19 information together. That's well below the CEO's role</p> <p>20 -- it would be expected of the CEO to look at these</p> <p>21 decks at this level down the organization. I assume it</p> <p>22 was people down that reported to Bob in his</p> <p>23 organization, pulling information together, drafts</p> <p>24 together, cut and paste. It could have been a lot of</p> <p>25 things. It wasn't anything to do with what our</p>	<p>Page 227</p> <p>1 point in time I saw -- I saw this. So Bob may have</p> <p>2 changed that knowing that I would want that changed</p> <p>3 or I felt that was correct. I don't know. I'd be</p> <p>4 speculating.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Turn to Fifth Third McHugh 006927; this is</p> <p>7 still on Exhibit 22.</p> <p>8 A. I'm there.</p> <p>9 Q. That is the CEO succession plan; is that</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. It now lists Tim Spence as the first in line,</p> <p>13 one to two years. Is that right?</p> <p>14 A. That's correct.</p> <p>15 Q. And Brian Lamb is listed in five-plus years;</p> <p>16 is that correct?</p> <p>17 A. That's correct, on this document.</p> <p>18 Q. And then, Tayfun Tuzun and Phil McHugh are</p> <p>19 listed as emergency successors; is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know where they would have gotten the</p> <p>22 information about Brian Lamb five plus years?</p> <p>23 A. Brian Lamb was talked about in a talent</p> <p>24 management discussion with the board in 2018. He was an</p> <p>25 up-and-coming leader. Had a lot of the characteristics</p>

<p>Page 228</p> <p>1 that potentially could elevate to a CEO position. He</p> <p>2 was someone we put on the list as someone we should keep</p> <p>3 an eye on. You know, five plus years, it could have</p> <p>4 been ten years. The document was only structured for</p> <p>5 five-plus. Doesn't mean it was in five years. So it</p> <p>6 was just a high potential person we should keep an eye</p> <p>7 on.</p> <p>8 Q. And is that information that you would have</p> <p>9 communicated to Bob Shaffer?</p> <p>10 A. That's information Bob would also have</p> <p>11 received in our conversations during the executive</p> <p>12 talent management discussion that goes on for hours with</p> <p>13 the board. His name would have been talked about as</p> <p>14 someday, would he have the runway to do that. That's</p> <p>15 more of a placeholder for someone that's a high</p> <p>16 potential that would someday could step -- potentially</p> <p>17 be considered for that role. But at the end of the day,</p> <p>18 that's something I believe the board wanted -- that has</p> <p>19 to consider. But at the end of the day when you look at</p> <p>20 Brian's background, I'm not sure that ever would be</p> <p>21 elevated to a CEO role. That's just a place holder for</p> <p>22 someone with high potential that was on the executive</p> <p>23 team, that was fairly new on the executive team,</p> <p>24 that wasn't necessarily wanting to be close to being</p> <p>25 vetted for a CEO job. Just someone we could keep an eye</p>	<p>Page 230</p> <p>1 event that added him there, I'm not aware of any event</p> <p>2 that took him off. It was completely inconsistent with</p> <p>3 any conversations, direction from the board,</p> <p>4 expectations. So I have no clue what would have</p> <p>5 happened, no instructions from me to do anything of that</p> <p>6 nature.</p> <p>7 Q. Mr. Carmichael, you've been handed Exhibit</p> <p>8 Number 23, Fifth Third McHugh 006762 through Fifth Third</p> <p>9 McHugh 006811.</p> <p>10 MR. CIOFFI: Counsel, do you have a copy for</p> <p>11 us?</p> <p>12 BY MR. SABA:</p> <p>13 Q. Can you identify that for me, please?</p> <p>14 A. Draft 11/12/19, human capital and executive</p> <p>15 talent management succession plan updates.</p> <p>16 Q. Have you ever seen this document before?</p> <p>17 A. I very well could have. We're getting --</p> <p>18 11/12, we're starting to get within four weeks of the</p> <p>19 event, so I would probably start to see drafts of this</p> <p>20 nature by now. That would be consistent with our</p> <p>21 practice. The data's consistent with how I was thinking</p> <p>22 of the organization. So I don't see any discrepancies</p> <p>23 on how I was thinking about it.</p> <p>24 (Exhibit 24 is marked for identification.)</p> <p>25</p>
<p>Page 229</p> <p>1 on. That's how I believe that was used.</p> <p>2 Q. Do you recall instructing Bob Shaffer to put</p> <p>3 Brian Lamb's name in for CEO succession?</p> <p>4 A. I don't recall instructing Bob to do that.</p> <p>5 I'm not saying I didn't. I don't recall that, putting</p> <p>6 Brian Lamb on there. That might have been a name we</p> <p>7 threw on there just to have, to make the board aware of</p> <p>8 a high potential person of keller{sic} in the</p> <p>9 organization that we should keep an eye on.</p> <p>10 Subsequently, Brian Lamb got a tremendous</p> <p>11 offer to be one of the top ten people job at JP Morgan</p> <p>12 Chase. So he was a high performing, high potential, but</p> <p>13 far from consideration for a CEO, but someone to keep an</p> <p>14 eye on. That's why he's on that list.</p> <p>15 (Exhibit 23 is marked for identification.)</p> <p>16 BY MR. SABA:</p> <p>17 Q. As you sit here today, are you aware of any</p> <p>18 event that would have occurred between November 7th and</p> <p>19 November 11, 2019, that would have led to Phil McHugh</p> <p>20 not being listed on the talent deck as president and</p> <p>21 CEO, and Tim Spence being listed instead as the next</p> <p>22 successor as president and CEO?</p> <p>23 A. I am baffled and confused how Tim -- Phil's</p> <p>24 name ever showed up on the one to two list. I don't</p> <p>25 know how that ever occurred, so I'm not aware of any</p>	<p>Page 231</p> <p>1 BY MR. SABA:</p> <p>2 Q. Can you identify Exhibit Number 24 for me,</p> <p>3 please?</p> <p>4 A. Looks like an e-mail from Bob Shaffer. Let's</p> <p>5 see the date on this e-mail. Its attachment is</p> <p>6 executive talent management/update 2019, 11/12/19</p> <p>7 PowerPoint presentation. Greg attaches a draft deck for</p> <p>8 your review. So he sent me the draft for review, this</p> <p>9 deck.</p> <p>10 Q. Goes on to say I've set up a time with you on</p> <p>11 Thursday to go through this and discuss succession.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And he also indicates there are a number of</p> <p>15 changes to this deck compared to what we used the last</p> <p>16 couple of years. Do you see that as well?</p> <p>17 A. I see that. So based on this, I would tell</p> <p>18 you that I'm about to see the first draft since my</p> <p>19 review of last year's deck and discussions of last</p> <p>20 year's deck. He's pointing out that we have changes.</p> <p>21 Q. What happened during your meeting with</p> <p>22 Mr. Shaffer to review this talent deck?</p> <p>23 A. I don't recall exactly what happened. I don't</p> <p>24 recall what changes were made. I would go through this</p> <p>25 with Bob. This would have been my first pass at this,</p>

<p>Page 232</p> <p>1 it appears. I would have provided my input if I saw any 2 discrepancies in the way we were thinking and talking 3 about the talent and succession planning. I would have 4 made sure this deck provided the clarity necessary to 5 the board and consistent with what we wanted to present 6 to the board.</p> <p>7 What I don't know and can't tell is if I 8 requested a change or Bob requested a change after this, 9 but this is what was presented to me. And this 10 indicates this was the first one I've seen.</p> <p>11 Q. I'm referring to Fifth Third McHugh 006789. 12 That would still refer to Phil McHugh now for potential 13 next position as head of middle market banking. Ready 14 now. Is that right?</p> <p>15 A. In this draft there was a potential 16 opportunity for Phil, something I thought he would do an 17 excellent job of, something we needed. And at the time, 18 if I remember correctly, we were restructuring middle 19 market out of what I'll call the total commercial bank 20 and providing different levels because it's a very 21 different type of banking, and it's tough to get one 22 person to do large corp and middle market banking.</p> <p>23 So this is, once again, trying to play to the 24 strength of the organization, leverage our talent for 25 the benefit of the organization, and my responsibilities</p>	<p>Page 234</p> <p>1 A. Yeah, it's hard to read, but yeah, I see it. 2 Q. Okay. Who would determine if an individual 3 was high, moderate, or at potential? 4 A. That determination is made over years of 5 assessment. In this case, Phil McHugh, or any of my 6 executives, it would be -- it would be my opinion, my 7 assessment, it would be human capital, Bob Shaffer's 8 assessment, it would be the board's assessment because 9 when I review this with them, we talk about that 10 potential, how they see the individual. I share how I 11 see the individual. We talk about their experiences, we 12 talk about their capabilities, we talk about their 13 strengths, we talk about their weaknesses. 14 And basically when you're at the top of the 15 level of the organization, all right, when you say high 16 potential, you should be able to jump up one to two 17 significant levels in the organization. So when you're 18 at the very top of the organization, and you're in that 19 executive level, enterprise committee member, the next 20 role up is going to be the president of the bank or the 21 CEO. That's the next role up. 22 So it's hard to be above moderate potential 23 when you're already at the highest level of the 24 organization. As I say, you can take on more, you can 25 do different roles, but you're not going to elevate to</p>
<p>Page 233</p> <p>1 are to make sure I put people in place that can do that 2 and elevate the total organization.</p> <p>3 So this was an opportunity for Phil that I 4 thought made sense. It doesn't mean we're going to put 5 him in that job. It's a potential. But that would also 6 be very consistent with moderate potential, which was an 7 expansion of his role or different role, that once 8 again, these jobs at the top of the house, we add things 9 to them, we take things away from them. They ebb and 10 flow based upon the needs of the organization and the 11 capabilities of the individual leading the organization. 12 This happens every single year. No one's entitled, 13 they're not kings in our position, they're employees of 14 the bank.</p> <p>15 Q. How was potential determined? 16 A. Someone that was capable of doing that role, a 17 role we might need to have filled. Potential means they 18 can do the job. This was ready -- this was someone that 19 could be a potential, ready now. So that means is if we 20 needed him to take over middle market, he could do that 21 immediately, right now. He has -- he's capable of doing 22 that.</p> <p>23 Q. There's three levels given a potential, high, 24 moderate, at potential. Do you see that under the word 25 potential?</p>	<p>Page 235</p> <p>1 the president or the CEO role in the case of a top 2 executive of the company on enterprise. That's kind of 3 how we think about it. 4 Now, this individual, if this was earlier in 5 Phil's career and he had multiple moves ahead of him, 6 you could easily see this as high potential. It ebbs 7 and flows based on where the person is in their career 8 and what level in the organization they hold. 9 Q. And what, if any, objective criteria are used 10 to determine an individual's potential? 11 A. The evaluation of the individual's skill set 12 and leadership, which includes his leadership 13 capability, and what the next role might be, whether 14 they can perform that role or not. In this case, high 15 potential would mean he could step in because of where 16 he was at in the organization to be the president or 17 CEO. Phil does not have those skill sets. 18 So the fact he doesn't have the skill set to 19 take a high, next high potential role in the company, 20 he's not a high potential because a high potential would 21 be reflective of him being able to take the CEO or 22 president's role. 23 If this was a lower level in the organization, 24 he could be a high potential because he could have a 25 couple of moves ahead of him that would elevate him.</p>

<p style="text-align: right;">Page 236</p> <p>1 But now you're at the top of the organization, and now</p> <p>2 we're assessing against the CEO potential, the president</p> <p>3 potential, he doesn't have that potential. So</p> <p>4 therefore, he's not high potential In the way we define</p> <p>5 it.</p> <p>6 Q. And the skill sets you refer to that you claim</p> <p>7 that Phil doesn't that, that wasn't set forth in writing</p> <p>8 anywhere, that Phil does not have these skill sets,</p> <p>9 correct?</p> <p>10 A. Phil does not have those skill sets -- is it</p> <p>11 in writing that he doesn't have any fintech experience?</p> <p>12 Is it put in writing that he didn't have strategic</p> <p>13 agility and we had to hire someone to come in and do the</p> <p>14 strategic plan for him year after year? Is it put down</p> <p>15 in writing he has no network with -- on the fintech</p> <p>16 side?</p> <p>17 Those are experiences after watching an</p> <p>18 individual operate, reported to me for years, he doesn't</p> <p>19 have those skills. He has never brought forth one</p> <p>20 example of a fintech opportunity. He's never done</p> <p>21 anything on the M&A side. He can't go in depth at all</p> <p>22 about our competitors, all right? So I don't need to</p> <p>23 write a document that says, Phil, you can't be the CEO</p> <p>24 because you lack these skills, when he doesn't seek</p> <p>25 that job, he's never sought that job, we never had a</p>	<p style="text-align: right;">Page 238</p> <p>1 can't elevate to the CEO job because he doesn't have the</p> <p>2 skills. Therefore, he's moderate potential.</p> <p>3 Q. Are those parameters for moderate, high, or at</p> <p>4 potential, is that set forth in writing anywhere?</p> <p>5 A. We have definitions of those that we've used</p> <p>6 in the past and when we do our talent management</p> <p>7 discussion, which I've done for decades and Phil's been</p> <p>8 part of for decades. We always identify high potential</p> <p>9 as someone that could elevate to a significant</p> <p>10 additional role in the company. They can elevate to one</p> <p>11 to two levels higher in the organization, and that's how</p> <p>12 we've always thought about high potential. We've always</p> <p>13 debated and argued individuals on the nine blocker.</p> <p>14 If they're high potential or they're at</p> <p>15 moderate, can they take on more -- really, can they</p> <p>16 elevate to the next higher level? When you're at the</p> <p>17 enterprise level, that next higher level would be the</p> <p>18 president or CEO. All right?</p> <p>19 So by the way we've defined it and the way</p> <p>20 we've used it throughout the years, moderate potential</p> <p>21 means he can take on more responsibility, do a slightly</p> <p>22 bigger role or bigger role, but can't elevate above</p> <p>23 that. Once again, it's a point in time in their careers</p> <p>24 where they're at and what opportunities they would have</p> <p>25 above them. When you're at the top job -- one of the</p>
<p style="text-align: right;">Page 237</p> <p>1 conversation about that job, and he was never considered</p> <p>2 for the job.</p> <p>3 If he was asking me why he's not going to be</p> <p>4 the CEO, he wants to be the CEO, we would have had a</p> <p>5 conversation about those weaknesses, because I would</p> <p>6 have based it on the needs are of the CEO, based on the</p> <p>7 profile that we've established for the CEO,</p> <p>8 that the board's established for the CEO.</p> <p>9 Q. The assessment that Phil only has moderate</p> <p>10 potential, is it set forth in any way in the terms of</p> <p>11 the analysis that was done to determine that, by you or</p> <p>12 by Bob Shaffer or by any members of the board?</p> <p>13 A. I'm not clear on the question. Will you</p> <p>14 please repeat the question?</p> <p>15 Q. Sure. You've listed moderate potential here,</p> <p>16 and I'm asking, is there any analysis that's done that</p> <p>17 leads to that description of moderate potential?</p> <p>18 A. The fact is, Phil does not have the skill set</p> <p>19 to elevate to the president or CEO position. By our</p> <p>20 definition, the way we view moderate potential, or at</p> <p>21 potential, is he could do more at the current level of</p> <p>22 the organization he is, he could take on more</p> <p>23 responsibility, he could do a different job, but he's</p> <p>24 not qualified to elevate -- since he's at the highest</p> <p>25 level already of the organization, short of the CEO, he</p>	<p style="text-align: right;">Page 239</p> <p>1 top jobs in the company --</p> <p>2 Q. Under the categories of leader capabilities,</p> <p>3 be a great coach indicates that Phil is effective as</p> <p>4 opposed to strength. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Why is he listed as effective as opposed to</p> <p>7 strength in be a great coach?</p> <p>8 A. Because at the end of the day, I don't recall</p> <p>9 any -- when I think about being a great coach, I look at</p> <p>10 overall talent management, this is not a strength of</p> <p>11 Phil McHugh. I can't recall any top level executive in</p> <p>12 the company, in our top 100 management team, where Phil</p> <p>13 McHugh has brought anyone into the organization. Matter</p> <p>14 of fact, there was at least one individual, I think two</p> <p>15 individuals that he brought in, one was Ruben Rashty,</p> <p>16 both those individuals we had to exit out of the company</p> <p>17 -- were the only two individuals I can think of that he</p> <p>18 recruited from the outside. Only two individuals I can</p> <p>19 recall that he's ever recruited from the outside at high</p> <p>20 level, and neither of them worked out.</p> <p>21 That happens, but you should be recruiting</p> <p>22 some that do work out, and he never has. In addition to</p> <p>23 that, he doesn't take action on employees. He's very</p> <p>24 slow to take action. An example of that would be</p> <p>25 the head of retail when he had consumer bank, Mike</p>

<p style="text-align: right;">Page 240</p> <p>1 Butera, he wouldn't take action on that. It was a 2 problem. Everybody knew it was a problem. Phil knew it 3 was a problem. He wouldn't take action. 4 So I don't see Phil as a great coach of 5 talent. If he was, we would have a lot of members on 6 enterprise that were related to Phil bringing them in 7 and bringing them up through organization. There's not 8 one. 9 So when I think about his talent skills, his 10 ability to recruit talent from the outside, his ability 11 to elevate talent, promote talent, I don't think that's 12 a strength of his. It's not something I observed as a 13 strength. Matter of fact, I would tell you, you know, I 14 wouldn't call it necessarily a weakness, but not a 15 strength of Phil McHugh. 16 Q. Are there any specific definitions for what's 17 required to be a great coach? 18 MR. CIOFFI: Objection. He just answered that 19 question. 20 BY MR. SABA: 21 Q. Does Fifth Third have a specific template or a 22 list of requirements to be a great coach? 23 A. When we think about talent and we think about 24 this category, you have to ask Bob Shaffer, but we think 25 about how an individual recruits, develops, and elevates</p>	<p style="text-align: right;">Page 242</p> <p>1 how I read that. 2 Q. You don't have a document of listed objective 3 criteria that you specifically use for making 4 that assessment, correct? 5 A. It's recruiting, it's promoting, it's taking 6 action on talent, it's making sure you have the best 7 people in the right roles. It's all of the above, and 8 it's subjective to a point that when I look at it in 9 totality, I rate how I think my leader does in that 10 area. I also have HR involved in their assessment of 11 that strength or weakness also involved, and we have a 12 discussion and we evaluate that based on that criteria. 13 Q. My question was, is that set forth anywhere in 14 writing? 15 A. I can't answer that question. I don't know. 16 That's a question for Bob Shaffer. 17 (Exhibit 25 is marked for identification.) 18 BY MR. SABA: 19 Q. Mr. Carmichael, you've been handed Exhibit 20 Number 25, which is Bates stamp Fifth Third McHugh 21 006836 through Fifth Third McHugh 006885. Can you 22 identify this document, please? 23 A. Appears to be another draft 11/13/19, board of 24 directors human capital executive talent management 25 succession plan updates.</p>
<p style="text-align: right;">Page 241</p> <p>1 talent in the organization. All right? All of that is 2 part of being a great coach, the way we categorize that 3 phrase, "great coach," it's around talent: talent 4 recruiting, talent development, talent elevation. 5 Q. Is that set forth in writing anywhere? 6 A. I'd have to go back and look and see how -- 7 how defined that is, but that's how we think about it. 8 Q. Is there a list of objective criteria 9 that's listed for what -- 10 A. I just listed out how I view that and what we 11 look for when we talk about that strength or weakness, 12 we look for those characteristics in the role and those 13 actions in individuals in the role. The fact that 14 Phil's never brought in any leadership is indicative 15 that he's not someone who can recruit talent in the 16 organization. That attracts talent to the organization. 17 The fact that I haven't seen him really 18 elevate anyone to a top position in the company after 19 30-something years, that's indicative of someone who 20 doesn't focus on talent and elevate talent. That's my 21 experience level as a CEO, that's Bob Shaffer's reaction 22 in assessment of that situation, and that's how we think 23 about that role. How defined it is underneath that , 24 you can talk to Bob and see if he has a document that 25 describes that, but I described how I think about it and</p>	<p style="text-align: right;">Page 243</p> <p>1 Q. If I can refer you to Fifth Third McHugh 2 006873 in Exhibit Number 25. That's the CEO's 3 succession template; is that right? 4 A. That's correct. 5 Q. The document now lists Tim Spence, still first 6 in line for CEO, but it says two to three years, as 7 opposed to one to two years, and Brian Lamb, longer 8 term. Do you see that? 9 A. I do. 10 Q. Why does it say two to three years as opposed 11 to one to two years? 12 A. As we worked through these drafts, we felt 13 that two to three years for CEO was probably an 14 appropriate timeline for Tim. Once again, this is going 15 to be the board -- this is for board discussion. The 16 board will opine on that two to three years when we sit 17 down with them. It was my best assessment of when I 18 thought Tim would be best positioned to step into 19 the CEO role. And it's my assessment to the board was, 20 that's the timeframe from my professional assessment as 21 the CEO of the company. Once again, the board will look 22 at that and make their own determination. And I think 23 that's the timeline things happened on roughly. 24 Q. Did you consult with any board members before 25 making that change from one to two years to two to three</p>

<p>1 years?</p> <p>2 A. No, I would not have consulted with any board</p> <p>3 member.</p> <p>4 (Exhibit 26 is marked for identification.)</p> <p>5 BY MR. SABA:</p> <p>6 Q. Mr. Carmichael, you've been handed Exhibit</p> <p>7 Number 26, which is Bates stamp Fifth Third McHugh</p> <p>8 006330 through Fifth Third McHugh 006370. Can you</p> <p>9 identify that document for me, please?</p> <p>10 A. Draft 11/18/19, board of directors human</p> <p>11 capital and executive talent management and succession</p> <p>12 plan updates.</p> <p>13 Q. If I can refer you to Fifth Third McHugh</p> <p>14 006357.</p> <p>15 A. Okay.</p> <p>16 Q. Referring to potential next positions, it says</p> <p>17 expand current responsibilities to include middle market</p> <p>18 leadership. What does that mean?</p> <p>19 A. It meant expand current responsibilities to</p> <p>20 include middle market leadership.</p> <p>21 Q. Referring back to Exhibit Number 25.</p> <p>22 A. Okay.</p> <p>23 Q. And referring you to Fifth Third McHugh</p> <p>24 006866, the talent card for Tim Spence.</p> <p>25 A. 6866?</p>	<p>Page 244</p> <p>Page 246</p> <p>1 opportunity, but once again, a potential opportunity as</p> <p>2 I defined it. Needs to be ready now to do that. That's</p> <p>3 what that means.</p> <p>4 Q. Did you have any intention that Tim Spence be</p> <p>5 placed in that role of head of regional banking and head</p> <p>6 of commercial banking?</p> <p>7 A. My belief was that would be a great</p> <p>8 opportunity for Tim Spence to continue to elevate the</p> <p>9 organization and acquire the experience that other</p> <p>10 executives, such as Phil McHugh acquired, and five other</p> <p>11 executives acquired prior to him when I was part of the</p> <p>12 bank, to lead their regions. Once again, that region</p> <p>13 position is used as a development opportunity, and I</p> <p>14 thought that would be a great opportunity for Tim to get</p> <p>15 that experience at some point under his belt because</p> <p>16 he's a very high potential. Can elevate, I believe, all</p> <p>17 the way to CEO role, present CEO role. So that is an</p> <p>18 opportunity for him and a potential opportunity for him</p> <p>19 to continue to expand his experiences, as it was when</p> <p>20 Phil took the job.</p> <p>21 Q. Referring you to Exhibit Number 26, and Fifth</p> <p>22 Third McHugh 006360. This is the November 18th draft.</p> <p>23 A. Okay. Hang on. This is the 18th draft. This</p> <p>24 is the 13th draft. Okay.</p> <p>25 Q. The timeline under potential for Mr. Spence</p>
<p>Page 245</p> <p>1 Q. Correct.</p> <p>2 A. Okay. I have that.</p> <p>3 Q. Under Tim Spence's potential, it says high</p> <p>4 potential, head of regional banking and head of</p> <p>5 commercial banking ready now. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And with respect to that, what was the</p> <p>8 intention that you would be moving him to the head of</p> <p>9 regional banking and head of commercial banking?</p> <p>10 A. This is potential, not a decision was made or</p> <p>11 not made to move this individual or any individual in</p> <p>12 these potential positions. I -- my job is identify</p> <p>13 opportunities to create the best organization possible.</p> <p>14 That's my job. That potential means this is a role that</p> <p>15 Tim Spence could take immediately, might take</p> <p>16 immediately, or might not. It's a potential.</p> <p>17 That's what the purpose of this card is for,</p> <p>18 is to demonstrate to the board my belief that this</p> <p>19 individual could take on these additional</p> <p>20 responsibilities. This is all to facilitate a</p> <p>21 discussion for the board who's going to make the final</p> <p>22 decision on president and CEO. I make decisions beneath</p> <p>23 that. I inform them of those decisions, but those are</p> <p>24 my decisions. So Tim, I would consider him for this</p> <p>25 role of the head of regions of commercial banking as an</p>	<p>Page 247</p> <p>1 has changed again. The head of regional banking ready</p> <p>2 now, the head of commercial banking, one to two years.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Why did that change?</p> <p>6 A. I don't know. Must have been my thinking at</p> <p>7 the time that I wanted him to have more time before he</p> <p>8 took on the commercial bank -- my assessment that that</p> <p>9 would probably be a better role for him to take in one</p> <p>10 to two years.</p> <p>11 Once again, I'll reinforce, these are</p> <p>12 potential. It's not cast in stone. This is how I'm</p> <p>13 thinking about it. Other things can materialize, other</p> <p>14 situations can materialize that would warrant a</p> <p>15 different outcome here based on the needs of the</p> <p>16 organization. This is meant to facilitate discussion</p> <p>17 only and identify opportunities. That's why the word</p> <p>18 potential is used.</p> <p>19 Q. Also listed as one of his key focus areas --</p> <p>20 what are the key focus areas, just areas for them to</p> <p>21 work on?</p> <p>22 A. Areas of opportunity. Every executive -- I</p> <p>23 would be remiss in my responsibility as CEO if I didn't</p> <p>24 find opportunities for my executives to get better.</p> <p>25 That's what that is.</p>

<p>Page 248</p> <p>1 Q. So there was an opportunity for him to get 2 better, Tim Spence, to demonstrate consistent attraction 3 of key senior talent. Is that right? 4 A. Yes. 5 Q. That was an area that he could focus on as 6 opportunity to improve? 7 A. That's absolutely an opportunity to improve 8 was -- as he continues to elevate in the organization, 9 staying focused on bringing in -- consistent, staying 10 focused on bringing in talent and evaluating and 11 developing talent. 12 Once again, as a high potential, that would be 13 something I think is critical as he continues to elevate 14 in the organization. It wasn't a weakness of his, but 15 there was opportunity to get better. 16 Just for the record, I'm always going to find 17 opportunities for my executives to get better. No 18 matter how -- even if it's a strength of theirs, I'm 19 going to find opportunities in a lot of cases for focus 20 on something I think's going to be critical for their 21 long-term success, and I will put it in there if I felt 22 it was appropriate. 23 MR. SABA: We can go off the record. 24 (A recess was taken from 5:23 to 5:33.) 25 VIDEOGRAPHER: Time is 5:33 p.m. We're back</p>	<p>Page 250</p> <p>1 circle, and that's why he recommended that she be hired? 2 A. I was under the impression that was Mike 3 Michael's hire. If that was erroneous information, I 4 was told in the person of Mike Michael was the one that 5 brought her in. I'm not suggesting that Phil didn't 6 have a role to play there; that was my understanding. 7 Q. And Chris Garrett is currently on the 8 enterprise committee; is that right? 9 A. She is. 10 Q. Do you know who Cary Putrino is? 11 A. Cary Putrino is a president of now our North 12 Florida market, I believe. 13 Q. North Florida or South Florida? 14 A. I think he's North Florida. He's North 15 Florida, I think. 16 Q. And he was also recruited and hired by Phil 17 McHugh; isn't that right? 18 A. I'm not aware of that. 19 Q. Do you know who Eric Houseman is? 20 A. I do know who Eric is. 21 Q. Okay. And what is Eric's role with Fifth 22 Third? 23 A. I don't know what his role is with Fifth Third 24 right now. 25 Q. What was your last understanding of Eric's</p>
<p>Page 249</p> <p>1 on the record. 2 BY MR. SABA: 3 Q. Mr. Carmichael, you were bringing up your 4 evaluation, what makes a great coach, and one assessment 5 or factor you brought up is whether or not they've hired 6 anybody who's now in the top 100 or 150 executives of 7 the company? 8 A. I said top 100. 9 Q. Top 100. And are you aware of any hires that 10 Phil McHugh has made that are currently in the top 100 11 of the company? 12 A. I'm not aware of anyone he's hired from the 13 outside and brought in as talent. I'm not aware of 14 that. I'm not saying there's not anybody, I'm just not 15 aware of who that would be. 16 Q. You're not saying they're not; is that right? 17 A. I'm saying I'm not aware of anybody. 18 Q. Okay. Do you know who Chris Garrett is? 19 A. I do know Chris Garrett. 20 Q. Who's Chris Garrett? 21 A. Chris Garrett runs a wealth asset management 22 company, an individual, I believe, Mike Michael 23 recruited into the bank. 24 Q. Didn't Phil McHugh actually recruit her, that 25 he knew her through the wealth management executive</p>	<p>Page 251</p> <p>1 role with Fifth Third? 2 A. First off, Eric Houseman, I believe, was hired 3 by Tom Hikes and recruited by Tom Hikes. So that was my 4 understanding of Eric Houseman. Cary Putrino, I'm not 5 sure who was involved in Cary Putrino's hiring. 6 My statement was, I'm not aware of anyone that 7 Phil's brought in. 8 Q. Is that specifically tracked at Fifth Third, a 9 record of who actually found this person and hired them? 10 A. I don't believe that's tracked. This is just 11 my exposure and my experience. That's why I used the 12 word I'm not aware of. 13 Q. So with respect to your assessment of who 14 actually brings these people in and cultivates these 15 people in the top 100, you're not necessarily aware of 16 who brought them all in; isn't that right? 17 A. I'm not aware of everybody, no. 18 Q. So it's difficult for you to accurately assess 19 with respect to whether or not somebody's a great coach, 20 you don't know how many people they've brought in; is 21 that right? 22 A. I have a pretty good idea of my leadership 23 and who they're bringing into the organization. The 24 timeframe we've talked about was over -- was over a 25 decade. I'm -- I was involved with Eric Houseman's</p>

<p style="text-align: right;">Page 252</p> <p>1 hiring. I'm not aware of Phil bringing Eric in. Once 2 again, I said I'm not aware. That doesn't mean Phil 3 wasn't involved in that process. He may have identified 4 somebody. I'm just not aware of that. In a lot of 5 individuals I know directly who was hired, some of them 6 I'm just not aware. 7 (Exhibit 27 is marked for identification.) 8 BY MR. SABA: 9 Q. Mr. Carmichael, you've been handed Exhibit 10 Number 27, which is Bates stamp Fifth Third McHugh 11 007016 through Fifth Third McHugh 007065. Can you 12 identify this document for me, please? 13 A. Draft 12/01/19 board of directors human 14 capital executive talent management and succession plan 15 updates. 16 Q. And referring to Fifth Third McHugh 007053 -- 17 and again, this is the CEO succession chart. Under that 18 succession chart, Tim Spence is still listed first in 19 line with Brian Lamb second. Tim Spence is now listed 20 three-plus years instead of two to three, and Brian Lamb 21 is listed seven-plus years. 22 Do you see that? 23 A. I do. 24 Q. Why was that change made? 25 A. Because that was the current thinking when</p>	<p style="text-align: right;">Page 254</p> <p>1 other feedback. I appreciate it. Looking forward to 2 seeing you in a couple weeks. 3 Do you know if Marsha or Mike McCallister had 4 any feedback regarding the talent deck as of that date? 5 A. That would be a good question for Bob since he 6 sent this e-mail out and was soliciting feedback. I 7 don't recall what that feedback might have been, but Bob 8 would. 9 Q. Did you have any discussions with Marsha 10 Williams or Mike McCallister about this 2019 version of 11 the talent deck? 12 A. I do not recall having a discussion. I do not 13 recall a discussion. My guess is that the first 14 discussion would have been with Bob, but they might 15 have -- they may have contacted me. I just don't recall 16 any discussion of this topic for this deck. 17 (Exhibit 29 is marked for identification.) 18 BY MR. SABA: 19 Q. Mr. Carmichael, can you identify Exhibit 20 Number 29 for me, please? 21 A. This looks like an e-mail sent to -- it would 22 have been the board of directors copying some assistants 23 from Bob Shaffer, providing them a copy of the deck we 24 plan on using in the human capital executive talent 25 management succession planning update on 12/17/19.</p>
<p style="text-align: right;">Page 253</p> <p>1 this draft was put together. That was probably a more 2 realistic timeframe. That's all I can assess and the 3 assumption I would make based on the fact that we go 4 through multiple drafts for a reason. Thinking's 5 evolving, adjustments are made. 6 Q. Did you have any discussions with any of the 7 board members regarding that? 8 A. I did not. 9 (Exhibit 28 is marked for identification.) 10 BY MR. SABA: 11 Q. Mr. Carmichael, I've handed you what's been 12 marked as Exhibit Number 28, Bates stamp Fifth Third 13 McHugh 001465. Can you identify this document for me, 14 please? 15 A. Appears to be an e-mail from Bob Shaffer to 16 Marsha Williams and Mike McCallister, with a copy to 17 myself. Subject matter Fifth Third human capital and 18 executive talent management succession plan updates. 19 Q. And it goes on to indicate Marsha and Mike, 20 attached is a draft to the deck we will use for the 21 human capital and executive talent and management 22 succession plan updates of the board on December 17th. 23 Wanted to share with you ahead of time for your review. 24 We plan to distribute to all board members by mid next 25 week. Please let me know if you have any questions or</p>	<p style="text-align: right;">Page 255</p> <p>1 Q. That would have been approximately a week 2 before the actual board meeting; is that right? 3 A. This says in the attachments, there's a date 4 here, 2019, 12/10, so this would have been a 12/10 5 draft. If one exists, if you have that, that would have 6 been the draft that would have been associated with 7 this. And probably not -- I'm using the word draft 8 instead of final, so it wouldn't have been a draft, it 9 would have been the final document. So if you have 10 that, that's what we would have shared at this point, 11 according to what this memo was. 12 Q. And that would have been sent approximately a 13 week before the board meeting; is that correct? 14 A. Well, I've got to look at it exactly. This is 15 12/10. I think we met on 12/17, so that's seven days, 16 that constitutes a week. Yes. 17 Q. Okay. And I think he indicates in here, I 18 look forward to seeing you next week. Is that right? 19 A. So I believe that's correct. Yes. 20 Q. All right. Did you have any discussions with 21 any of the board meetings prior to -- I'm sorry. 22 A. Board members. 23 Q. Correct that. 24 Did you have any conversations with any 25 members of the board prior to that board meeting</p>

<p>1 regarding the talent deck?</p> <p>2 A. I did not. I don't -- I'm not aware of any</p> <p>3 conversation I had. I can't recall if someone reached</p> <p>4 out to me on that. Once again, I don't have that recall</p> <p>5 if that happened three years ago -- four years ago, so I</p> <p>6 don't recall that.</p> <p>7 Q. Do you recall that there would have been an</p> <p>8 enterprise committee meeting on Thursday, December 12,</p> <p>9 2019?</p> <p>10 A. Well, we have a Thursday -- we have enterprise</p> <p>11 committees on Thursday, I believe, during that time</p> <p>12 period. So I'm not positive, but I believe we would</p> <p>13 have enterprise committee. We typically would have our</p> <p>14 enterprise committee so -- we would have our enterprise</p> <p>15 committee by design during that week, unless we made a</p> <p>16 decision not to have one that week. I can't recall</p> <p>17 that. I don't have the calendar in front of me.</p> <p>18 Q. And do you recall there was an enterprise</p> <p>19 committee meeting where Frank Forrest said in the</p> <p>20 meeting, we all know that Greg likes to control the</p> <p>21 message to the board?</p> <p>22 A. I have never heard a comment of that nature</p> <p>23 whatsoever. I've never heard a comment like that, of</p> <p>24 that nature ever. No, I wasn't aware of that. I've</p> <p>25 never heard of that, and I wasn't in any conversation</p>	<p>Page 256</p> <p>1 messages, text messages, that kind of stuff. It doesn't</p> <p>2 resonate with me.</p> <p>3 Q. Did you ever have a conversation with Tim</p> <p>4 Spence where he indicated that Frank Forrest had said</p> <p>5 during an enterprise committee meeting that we all know</p> <p>6 that Greg likes to control the message to the board?</p> <p>7 A. I can't recall ever hearing that statement.</p> <p>8 Frank does my risk reviews. He gives me extremely high</p> <p>9 marks. If I was controlling and he felt controlling the</p> <p>10 message to the board, it would be his job and</p> <p>11 responsibility to identify that as a risk because you</p> <p>12 would never want to see or control the message to the</p> <p>13 board. You want the message to be what the message is,</p> <p>14 and you want the data to speak for itself in a highly</p> <p>15 regulated industry. I've never seen any of that in my</p> <p>16 risk assessment from Frank that he thought that way.</p> <p>17 I've never heard anyone mention that to me, that I can</p> <p>18 recall.</p> <p>19 And Frank's not shy about walking in my office</p> <p>20 and telling me any concern he has, so I have no doubt if</p> <p>21 he felt that way he would have come and see me. I have</p> <p>22 never heard from him on that topic or ever felt that he</p> <p>23 had that concern.</p> <p>24 (Exhibit 30 is marked for identification.)</p> <p>25</p>
<p>Page 257</p> <p>1 that that took place, which would be contrary to what</p> <p>2 Frank has told me over and over again about the</p> <p>3 transparency that he has to the board and the</p> <p>4 connectivity he has to the board, and the opportunities</p> <p>5 he has to meet one-on-one with the board.</p> <p>6 So I don't know how I would be controlling.</p> <p>7 That's just the opposite of how I think and how I</p> <p>8 managed the organization. I get high marks for being</p> <p>9 very transparent. My job is to make sure the messages</p> <p>10 are clear to the board, that they don't confuse the</p> <p>11 board. Board members only come in four times a year, so</p> <p>12 we want to make sure that -- how they say things to the</p> <p>13 board. They use a lot acronyms and so forth, we would</p> <p>14 have that type of conversation.</p> <p>15 But never the message itself. There's too</p> <p>16 much data, too much visibility for me to control</p> <p>17 anything. The board has full access and full</p> <p>18 visibility. So no, the answer is no to that question.</p> <p>19 Q. Did Bob Shaffer ever contact you while in an</p> <p>20 enterprise committee meeting and let you know that Frank</p> <p>21 Forrest had made a comment that Greg likes to control</p> <p>22 the message to the board?</p> <p>23 A. I can't recall that. I do not recall that</p> <p>24 happening. It doesn't mean I didn't get something of</p> <p>25 that nature. I don't have that kind of recall on</p>	<p>Page 259</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Carmichael, I've handed you what's been</p> <p>3 marked as Exhibit Number 30, which is Bates stamp Fifth</p> <p>4 Third McHugh 001105 through Fifth Third McHugh 001154.</p> <p>5 Can you identify this for me, please?</p> <p>6 A. It doesn't say draft. It just says board of</p> <p>7 directors human capital and executive talent management</p> <p>8 succession plan updates, December 17, 2019. My</p> <p>9 assumption would be and only assumption that this is the</p> <p>10 final version that was used.</p> <p>11 Q. Let me represent to you that this has been</p> <p>12 previously testified to as the final version that was</p> <p>13 presented to the board. Do you have any reason to</p> <p>14 believe that it's not the final version that was</p> <p>15 presented to the board?</p> <p>16 A. Nope. I have no reason to believe that this</p> <p>17 was not the final version presented to the board. From</p> <p>18 my quick observations.</p> <p>19 Q. With respect to the topic of executive talent</p> <p>20 management and succession planning, specifically with</p> <p>21 respect to president and CEO, was there any other</p> <p>22 documentation that was provided to the board for the</p> <p>23 December 2019 meeting?</p> <p>24 A. Could you please re-ask the question again?</p> <p>25 Q. Certainly. With respect to executive talent</p>

<p>1 management and succession planning, specifically with 2 respect to president and CEO, was there any other 3 documentation presented to the board for the December 4 2019 meeting? 5 A. I don't believe so. Typically, this would be 6 the only document. We only have -- we have two or 7 three-hours discussions that usually facilitated this 8 document. I'm not aware and can't recall any other 9 information, documentation being presented at this -- at 10 that meeting at that time. 11 (Exhibit 31 is marked for identification.) 12 (Exhibit 32 is marked for identification.) 13 BY MR. SABA: 14 Q. Mr. Carmichael, you've been handed Exhibits 31 15 and 32. For first Exhibit Number 31, it is Bates stamp 16 000253 through 000265. Can you identify Exhibit Number 17 31 for me, please? 18 A. Appears to be the minutes of the meeting of 19 the board of directors on December 17, 2019. 20 Q. And then referring to Exhibit Number 32, which 21 is Bates stamp Fifth Third McHugh 000266 through 000283. 22 Identify that document for me, please. 23 A. This appears to be the minutes of the board of 24 directors, December 17, 2019. 25 Q. Just to be clear, Exhibit 31 are the minutes</p>	<p>Page 260</p>
<p>1 for the Fifth Third Bank corp; is that correct? 2 A. 31 is Fifth Third Bank corp and 32 is Fifth 3 Third Bank. 4 Q. And the meetings for these two entities are 5 taking place simultaneously with the board of directors, 6 correct? 7 A. Yes, it's one board minuted for at a board 8 level, bank corp level, and at a bank level. Regulatory 9 requirements. 10 Q. And at least with -- through the section of 11 executive session of CEO on page 2 -- 12 A. Which exhibit, please? 13 Q. I'm going to be referring to both in my 14 question. So hold on one second. 15 My question is, essentially, that with respect 16 to this first section of Exhibit 31 and Exhibit 32, 17 specifically through executive session with CEO on 18 page 2, the minutes are identical; is that right? 19 A. I haven't read it yet, but I would be 20 surprised if they were different. Would you -- want me 21 to read through these and compare them? But I would 22 expect them to be the same. 23 Q. You can. I'm -- just for simplicity, I'm just 24 trying to confirm that section is the same. There are 25 other sections that are different in the minutes.</p>	<p>Page 261</p>

1 A. Just give me one second. I would think these
2 sections would be -- Counsel, would be identical, but I
3 haven't read them both side by side. So yeah, my
4 assumption is these should be, would be identical, that
5 section.

6 Q. Okay. And I'm going to refer to Exhibit 31
7 starting out.

8
9 (Off-the-record discussion.)

10
11
12 _____
13 Gregory Carmichael

14 _____
15 Date

16
17 - - -
18 DEPOSITION CONCLUDED AT 6:00
19 - - -
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Sydney Jackson, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that I recorded in stenotype and thereafter transcribed the within pages, and that the foregoing transcript of proceedings is a true, complete, and accurate transcript of my said stenotype notes to the best of my ability.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this 10th day of October, 2023.

My Commission expires
February 17, 2026

S/Sydney Jackson
Notary Public - State of Ohio

1 DEPOSITION ERRATA SHEET

2 Date Taken: September 26, 2023

3 Case Caption: PHILIP MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury
7 that I have read the entire transcript of
8 my deposition taken in the captioned matter
9 or the same has been read to me, and
10 the same is true and accurate, save and
11 except for changes and/or corrections, if
12 any, as indicated by me on the DEPOSITION
13 ERRATA SHEET hereof, with the understanding
14 that I offer these changes as if still under
15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 Gregory Carmichael
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2 DEPOSITION ERRATA SHEET

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Gregory Carmichael

3 DEPOSITION ERRATA SHEET

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Gregory Carmichael

WORD INDEX

< \$ >	006742 222:8	100,000 75:4, 11	17 3:15 30:24
\$100,000 77:4, 7	006748 222:25	10th 263:13	157:16 177:4, 8, 11
79:18	006761 212:24	11 3:12 54:14 127:6,	259:8 260:19, 24
	006762 230:8	9 128:18 129:16	263:19
	006789 232:11	201:25 229:19	1700 2:12
	006811 230:9	11/07 212:19	177 3:15
< 0 >	006836 242:21	11/07/19 213:3	17th 253:22
0 102:8	006866 244:24	11/12 230:18	18 3:15 201:17, 20
000253 260:16	006873 243:2	11/12/19 230:14	18th 246:22, 23
000265 260:16	006885 242:21	231:6	19 3:16 72:8 155:3,
000266 260:21	006886 223:13	11/13/19 242:23	4 203:25 204:3
000283 260:21	006918 224:11	11/18/19 244:10	214:14
0006555 124:21	006921 226:3	11:14 61:16, 17	
0006562 124:22	006927 227:6	110 3:9	< 2 >
000695 110:23	006940 223:14	113 3:9	2 3:7 29:9, 12 37:18,
000700 110:23	006943 213:7	114 3:10	24 61:21 72:14, 20
111:12	006955 218:21	12 3:12 10:25 111:9	73:5 75:19 129:22
000701 113:16	006968 213:17 214:7	112:6 130:5, 8 256:8	261:11, 18 265:1
000709 113:17	006971 218:2	12/01/19 252:13	2,050,352 31:22
000732 115:1	006977 219:10, 13	12/10 255:4, 15	2:23 155:7, 8
000737 115:1	006978 219:13	12/17 255:15	2:39 155:8, 9
000758 120:8	006989 213:8	12/17/19 254:25	20 3:16 7:9 29:20
000763 120:9	007016 252:11	12:28 114:17, 19	30:9 72:17 78:15, 23
000766 127:9	007053 252:16	12:30 108:12, 14	108:11 109:2 212:16,
000773 127:10	007065 252:11	114:11	19, 23 221:3 264:17
000784 130:8	0213064 36:22	120 3:10	2000 28:7 157:15
000791 130:9 131:17	0213203 201:21	122 3:11	2003 10:22 108:20
000823 132:7	0214533 155:15	124 3:11	2005 6:1 109:2
000828 133:17	0214537 160:2	127 3:12	2006 6:1 10:24
000830 132:8 135:8	0214550 155:15	13 3:13 66:21 111:9	27:25
136:6 138:19	086284 177:11	132:4, 7	2009 37:24 38:1
000836 140:9		130 3:12	201 2:12 3:15
000840 140:10	< 1 >	132 3:13	2010 110:5
001105 259:4	1 3:7 10:11, 14	13th 246:24	2011 10:25 111:4, 18
001154 259:4	154:12 264:1	14 3:13 30:23 71:12	112:2 114:2
001465 253:13	1:00 177:15	140:6, 9 141:16	2012 11:3, 16, 22
005483 204:3	1:06 114:19, 20	140 3:13	111:15 113:19 114:3,
005507 214:15, 17, 20,	1:21-CV-00238 1:7	15 3:14 108:10	4, 14
25 215:21	4:7	152:9, 12 173:4	2013 115:3, 4, 15
005515 204:4	1:30 177:15	177:17 180:6 181:16,	2014 115:11 116:19
006330 244:8	10 3:7, 11 48:7	19 182:13, 19 183:10,	120:11, 25 128:3, 6
006357 244:14	61:21, 23 124:18, 21	16 184:5, 11 185:21	2015 11:1, 14, 21, 22
006360 246:22	126:24 197:13	186:2 188:7 195:17	12:5, 8 120:22 123:7,
006370 244:8	10/25 212:19	217:10 220:5	25 124:1 127:12, 15
006552 123:3	10/25/19 213:9	150 249:6	128:6 129:2, 11, 12,
006554 123:4	10:51 202:1	152 3:14	14, 16
006560 125:18	10:56 61:14, 16	155 3:14	2016 129:12, 14
006714 212:24	100 157:1 239:12	16 3:14 30:24	130:11, 23 131:11, 17
006739 221:10	249:6, 8, 9, 10 251:15	155:11, 14 157:15	2016-2017 157:17
		160:1 175:14 176:24	

2017 132:10, 12
 138:10 141:20
 146:18
2018 11:2 12:18
 30:12 32:17 35:6, 7,
 13 37:18, 24 42:18,
 21 44:10 136:9
 140:12, 21, 24 141:7,
 23 154:12 155:3, 4
 197:17 204:6, 16
 214:18 215:12, 21
 227:24
2019 19:24 22:11
 26:3, 4, 6 28:16
 101:2, 12 104:7
 106:10 107:6 108:5
 142:11 147:23
 151:17 177:17 178:8
 180:6 181:16, 18, 19
 182:13, 19 183:10, 16
 184:5, 11 185:1, 15,
 21 186:2 188:7
 195:18 197:9, 21
 201:25 211:13 212:5
 214:1 215:22 217:10
 220:5, 18 221:4, 12
 222:2 229:19 231:6
 254:10 255:4 256:9
 259:8, 23 260:4, 19,
 24
2020 11:7 31:20
 48:8 71:13 73:5
 74:18 84:7, 14 137:6,
 10 138:9
2021 72:13
2022 10:16 11:25
 12:12, 13
2023 1:17 4:2
 263:14 264:2
2026 263:19
203 3:16
20's 221:4
21 3:17 43:2 61:22
 82:23 84:19 212:17,
 20 213:6, 12, 13, 15,
 18 218:1, 20 219:9
212 3:16, 17
21st 9:24

22 3:17 66:22 88:1
 223:10, 13 224:10
 227:7
223 3:17
229 3:18
23 3:18 85:16
 229:15 230:8
230 3:18
24 3:18 230:24
 231:2
242 3:19
244 3:19
25 3:19 120:22
 214:1 215:22 242:17,
 20 243:2 244:21
250 72:20 73:5
 75:19
252 3:20
253 3:20
254 3:21
258 3:21
26 1:17 3:19 4:1
 244:4, 7 246:21
 264:2
260 3:22
2623 2:6
2680 88:22
27 3:20 252:7, 10
28 3:20 253:9, 12
29 3:7, 21 254:17, 20

< 3 >
3 3:8 7:7 36:16, 19
 266:1
3.7 121:17
3.75 121:2, 10
3.8 133:14
3:51 206:2, 3
30 3:21 258:24
 259:3
30-plus 183:23
30's 169:1
30-something 147:2
 241:19
31 3:22 10:16
 260:11, 14, 15, 17, 25
 261:2, 16 262:6
32 3:22 260:12, 15,
 20 261:2, 16

35 7:13
36 3:8

< 4 >
4 3:8 88:17, 20
 93:15 110:18 121:4
 152:17
4:07 206:3, 4
40 48:12 61:25
 62:23 63:6, 17
 169:13 175:11
45202 1:20 2:13
45208 2:6
45242 7:7

< 5 >
5 3:4, 9 30:10
 110:15, 20, 21, 22, 25
 111:22 115:21
 121:11, 17 160:2
 173:4
5:23 248:24
5:33 248:24, 25
50 73:9
511 1:19
513.362.8700 2:13
513.533.2701 2:7
513-470-8400 37:9
513-765-9166 37:7
5502 214:21 215:5
5th 12:13

< 6 >
6 3:9 28:7 31:19
 111:15 113:13, 16
 115:21 121:4 125:17
 129:22 133:16
6:00 262:18
60 73:10 137:10
60-plus 77:16 138:5
67-years-old 172:8
6866 244:25
69 224:12
6955 218:22
6968 213:19 215:24
6971 218:5
6978 219:17

< 7 >

7 3:10 28:7 32:17
 35:6 114:22, 25
 133:16 221:4, 12
7th 222:25 225:16
 229:18

< 8 >
8 3:10 43:2 120:5, 8,
 19 128:2
8/15/2019 177:14, 15
8:09 37:19, 24
80 172:5
88 3:8

< 9 >
9 3:11 45:14 93:14
 122:25 123:3
9:40 1:18 4:2

< A >
a.m 1:18 4:2 61:14,
 17 202:1
aback 171:15
Abbingdon 7:7
ability 19:13 41:17
 172:4 240:10 263:11
able 29:12 35:10
 37:20 65:23 85:11
 111:22 129:15 141:4
 152:22 153:10, 14
 203:14 214:6 234:16
 235:21
Absolutely 29:8 56:5
 65:18 77:21 98:17
 101:17 104:13 113:4
 125:9 137:3 142:1, 3
 143:18, 21 169:10
 174:9 182:1, 11
 183:15 184:12, 16, 18
 185:8 188:19 189:3
 194:15, 21 196:8
 197:3 201:3 203:11
 205:18, 22 216:24
 248:7
abuse 89:17 90:5, 7,
 9 95:9 96:2, 9
ACC 77:24
accelerated 125:19
accept 45:16 84:21
 173:22

acceptable 87:24
 94:10
access 21:7, 19 23:8
 24:5 257:17
accomplishes 93:19
 94:2
account 14:4
accountability 139:2
 140:2, 4
accountable 142:3
accuracy 29:22, 25
 30:5 75:17
accurate 29:7 30:7
 72:25 73:1, 3 91:5
 95:24 263:10 264:10
accurately 251:18
achieve 139:1 144:3
 145:1
achieving 136:8
acknowledge 169:8
acknowledged 34:10
 56:25
acknowledging
 144:18
acquire 149:15
 190:20 246:9
acquired 246:10, 11
acquisition 137:15,
 16 149:4, 18 150:9,
 19 197:8 198:7, 12
 199:4
acronym 123:22
acronyms 257:13
act 140:5
action 62:22, 25
 159:23 160:10 173:8
 239:23, 24 240:1, 3
 242:6
actions 133:21 144:9
 152:2, 7 161:10, 11
 241:13
active 134:6
activities 134:10
 136:1 144:21
activity 50:1 54:16
actual 255:2
add 50:6 74:20, 23
 77:3 105:2 133:4
 146:18 152:23
 181:22 216:8 233:8

added 79:24 133:6
 216:2, 4, 5, 13 230:1
adding 73:18
addition 66:22 75:9
 239:22
additional 10:23
 73:19 75:4, 11 80:3
 238:10 245:19
Additionally 6:25
address 7:6 134:5
addressed 14:9
 134:4 199:22
addresses 139:7
addressing 136:8, 11
 177:6
adjusted 84:12
adjustments 74:1
 81:24 253:5
administered 123:14
 204:19
administration 9:19
administrative 30:22
 31:1, 10 41:12 73:16
 143:8 148:6, 21
 152:6
administrator 148:14,
 24
admire 190:24
adoption 150:2
advantage 21:20
advisors 110:10
 128:1
advisory 111:24
 114:1
Advocacy 155:18
affiliates 110:4
afterthought 71:9
 90:24 91:2
age 5:13 28:24
 48:11 61:24 62:2, 12,
 25 63:1, 3, 6, 7, 9, 17,
 18, 19, 23 64:2, 3, 4, 5,
 10, 15, 23 65:11, 13,
 17 66:7, 18, 19 89:13
 90:1, 23 91:6 94:20,
 25 95:18 96:25
 97:14, 17, 19, 20, 24
 98:7 99:15, 18
 125:20, 22 166:18
 168:25 169:8, 16

171:11 172:3, 10, 13,
 21 174:3, 5, 9, 13, 16,
 23 175:2, 3, 5, 15, 21,
 24 176:4, 7 177:1, 6
 214:18 216:2, 4, 11
agencies 221:23
agency 71:15, 17
agenda 14:4
age-related 174:20
ages 216:8
agility 189:16 236:13
ago 54:18 79:5
 109:2, 22 111:9
 112:6 124:13 195:4
 219:8 256:5
agree 93:23, 24
 100:6 104:12 160:6,
 10 170:22
agreed 104:15
 105:12, 16 221:14
agrees 170:3
ahead 11:18 16:14
 33:20 62:16, 20
 70:16 79:3 81:3
 87:16, 20 90:13 93:4
 96:5 139:13 235:5,
 25 253:23
aims 93:20 94:2
al 1:9 4:7 264:4
alcohol 162:15
aligned 84:12
aligning 193:8
allegations 29:6 30:4
 45:14 90:15
allegedly 47:16
all-inclusive 162:13,
 15
allocate 18:5
alternatives 18:20
amended 29:17
America 14:19
 212:15
amount 15:24 90:15,
 25 119:10 138:2
 145:15
analysis 237:11, 16
analysts 94:16
 180:22
and/or 46:22 59:5
 60:8 104:22 264:11

Anderson 67:11
 70:2 127:19 128:15,
 20, 24 129:2 130:16
 131:8 132:22 198:3
 201:12
Anderson's 131:10
angered 82:25 85:9
angry 83:8 85:1
announced 197:11,
 12, 17
announcement 84:9,
 11, 13, 16
annual 32:8 72:13,
 20 75:5, 18 113:21
 156:13 174:4
annually 17:22 116:9
answer 6:22 7:1
 8:23 29:16 31:23
 33:20 39:10 52:15,
 18, 19, 20 53:25 54:4
 56:11 59:13, 22 62:4,
 21 64:17 65:5 70:16
 78:19 79:3 80:8
 90:11, 13 92:10 93:4,
 6 95:10, 11 96:6, 10,
 12, 16 97:6 98:15, 16
 104:24 105:2 124:15
 126:4 138:21 160:23,
 25 164:15 165:21
 166:5 167:21 168:8,
 21 170:6, 12, 13
 171:3, 4 173:7 175:8
 177:7 206:13 207:4
 208:4, 6, 8 226:19
 242:15 257:18
answered 21:23 47:1,
 24 51:16 57:6, 18
 59:6, 21 64:16 78:18
 100:18, 19 105:1, 17
 106:19 164:5 165:20
 167:5 171:4 176:8
 195:3 196:5 208:22
 217:24 226:18
 240:18
answering 96:15
answer's 82:22
anticipated 79:21
 206:16 207:2 210:14
anticipating 207:25

anybody 7:20 20:4
 59:24 78:3 162:8
 164:8 186:1 249:6,
 14, 17
anyway 58:24
 207:22 211:7
apparent 169:24
Apparently 111:19
 140:19 141:21 216:4
 222:15
APPEARANCES 2:1
Appears 10:16
 38:18 127:22 133:3
 141:19 173:4 204:6
 213:9 214:7, 8 218:8
 219:14 221:20 223:2,
 16 232:1 242:23
 253:15 260:18, 23
appetite 139:18
applies 173:24
appoint 49:13
appointed 11:13, 20
 14:18, 21, 22 51:13
appreciate 113:5
 254:1
appreciated 112:25
 146:3 157:5
approach 36:3 47:5
approached 32:20
 104:6 194:14 204:22
approaches 102:21
 139:14
approaching 186:17
 197:23 205:5
appropriate 52:16
 134:17 142:10 149:6,
 22 150:4 159:25
 165:5, 18, 24 173:1
 181:11 243:14
 248:22
appropriately 14:2
 25:19 78:13 139:7
 146:21 149:3
approval 77:24 80:1
 197:20
Approximately 7:9
 255:1, 12
April 12:3, 23 115:11
area 112:11 131:5
 134:13 136:2 145:17

199:19 222:1 242:10
 248:5
areas 144:17 147:9
 192:6 193:10 221:21
 224:24 247:19, 20, 22
argue 94:4
argued 238:13
arguing 91:12
art 52:12
articulate 173:12
 190:7
articulated 191:5
 193:24
asked 6:3 35:17, 22
 36:3 41:4, 14 44:16
 46:13, 15 47:1, 5, 24
 50:12 51:2 52:6, 13
 59:6, 11, 21 64:9, 16
 65:2 67:23 70:3
 74:11 80:13, 18
 100:10, 18 102:22
 121:25 122:10, 13
 133:4 150:19 165:20
 167:4 170:5 176:10,
 21 181:11, 20 185:10
 186:13 188:14, 18
 195:3 197:5 201:2
 203:18 206:18 210:1,
 18 226:18
asking 6:17 23:19
 30:1 56:3 62:16
 64:22 65:3, 4 76:10
 86:5 92:13, 14, 22
 93:7 95:7 96:17, 19,
 20 98:1 105:1
 106:22 119:20
 121:24 122:8 158:6,
 8, 9 164:8 167:1, 13,
 19, 22, 23 170:3, 21
 172:16 176:9 180:15
 193:14 205:15 207:6,
 7 226:23 237:3, 16
aspects 198:8
assess 49:20 60:13
 131:3 251:18 253:2
assessed 57:22
 192:24 193:25
assesses 139:15

assessing 52:25
 100:25 104:1 123:17
 124:9 208:1 236:2
assessment 50:10, 18,
 20 52:23 68:3
 106:20 107:25
 193:22 234:5, 7, 8
 237:9 241:22 242:4,
 10 243:17, 19, 20
 247:8 249:4 251:13
 258:16
assessments 180:4
asset 115:7 120:14
 128:4, 10 130:15
 133:7 134:9, 10
 141:3 249:21
assigned 154:22
assignment 84:21
 136:25 183:14
assignments 82:4
 114:10 147:13
assist 139:4
assistant 41:9
assistants 254:22
associate 171:10
associated 159:18
 255:6
Association 88:21
assume 32:1 62:6
 84:15 88:3 127:2
 155:22 204:9, 10
 225:21
Assumes 63:8 98:14
 144:22
assuming 29:24
 86:20 156:1 164:19
assumption 62:8
 79:22 253:3 259:9
 262:4
assumptions 20:7
attached 253:20
attaches 231:7
attachment 231:5
attachments 255:3
attended 72:2
attention 171:20
 179:12
attitude 160:12
 173:10

attorney 4:21 8:12
 90:8
attorneys 4:23 7:16,
 19, 21, 24 8:2, 9
attraction 248:2
attracts 241:16
attributed 138:3
audit 21:3, 6 22:20
 23:11 154:1, 5, 18, 24
August 30:12 42:17,
 21 177:17 180:6
 181:16, 19 182:13, 19
 183:10, 16 184:5, 11
 185:21 186:2 188:7
 195:17 217:10 220:5
authorities 202:24
authority 92:7, 18
 98:24
available 16:17, 21
 155:5
Avenue 2:6
avoid 173:14
awarded 89:13
awards 32:13
aware 22:21 23:15
 28:22 29:1 45:8
 47:25 57:13 69:7, 8
 70:4 71:8, 16 80:2
 89:11 90:3 91:20, 22
 99:5, 12 109:9, 12
 147:3 159:2 161:13
 171:19, 21 177:7
 195:10 229:7, 17, 25
 230:1 249:9, 12, 13,
 15, 17 250:18 251:6,
 12, 15, 17 252:1, 2, 4,
 6 256:2, 24 260:8
Awareness 155:18

< B >
back 10:22 11:15
 13:15 14:11 19:24
 23:25 33:6, 9 35:12,
 18 36:6 42:6, 24
 43:1, 2, 19 47:3
 54:14 57:1 58:18, 23
 60:12 61:18, 20
 63:11 70:12 78:25
 80:9, 21 84:19 88:8
 89:20 95:15 107:25

<p>109:18 111:3 114:20 128:2 130:23 143:6 155:9 159:1 162:2 166:5, 8 184:22 187:10 188:8 194:13 196:6 197:1 205:25 206:4 214:24 215:11, 20 241:6 244:21 248:25 background 159:16 189:21, 24 190:15 202:25 203:11 228:20 backup 184:2 badge 160:20 161:22 baffled 229:23 Bailey 2:4 4:22 BANCORP 1:9 2:17 4:6 264:4 bank 9:25 10:1, 3, 4, 5, 8, 18 11:9, 11 13:16, 18 16:9 25:1, 25 30:14 32:18 44:2, 7 45:24 48:9, 11 49:25 50:1, 22 51:14 53:23 54:15, 16, 17, 19 55:16, 20 57:23 60:18 64:7, 25 65:9, 12, 21 70:19 73:8 77:16 86:1 88:21 89:14, 25 90:20, 24 97:2 98:11, 19 99:3, 14, 15, 18 100:5, 8 104:23 107:22 108:21, 23 109:7, 11 110:8 112:23 113:12 116:8 132:14 134:25 135:15, 17, 19, 23 136:1, 16 137:5, 9, 11, 18, 25 138:8, 10 140:4 142:22 147:9, 10 149:8 151:8, 14, 18, 19, 22 155:1 174:15 184:13, 19, 21 187:9, 24 190:21 199:9, 10, 19 200:1, 5, 19 212:3 213:10 219:4 225:6, 11 232:19 233:14 234:20 239:25</p>	<p>246:12 247:8 249:23 261:1, 2, 3, 8 banking 30:18, 19 31:21 72:10, 18 80:4 82:20 84:22 85:25 88:4 99:3 133:5, 9 134:18, 20, 25 135:3 136:19, 23, 24 137:1 141:3 144:13 149:11 150:3 184:7 190:17 218:12, 13 222:12, 13 225:1, 3, 7, 8 226:10 232:13, 21, 22 245:4, 5, 9, 25 246:5, 6 247:1, 2 banks 133:5 bank's 71:13, 14 72:13 89:2 base 96:1 177:24 179:3, 14 based 14:4 16:11 24:16 27:4 60:2 62:25 63:2, 7, 9, 18, 21 64:2, 10, 14 66:7 84:15 86:21 91:6 97:25 106:3, 4 159:13, 14, 16 175:2 179:17, 18 207:14 216:6 224:4 231:17 233:10 235:7 237:6 242:12 247:15 253:3 basically 13:3, 20 14:10 101:23 128:11 150:7 159:13 190:4 193:6 199:16 200:11 234:14 basis 81:15 92:9, 14, 17 95:4, 9 96:14, 20 97:3 210:13 Bate 37:3 Bates 36:20 110:22 114:25 155:14 177:11 201:20 212:23 242:20 244:7 252:10 253:12 259:3 260:15, 21 bear 121:8 beautiful 169:14</p>	<p>becoming 68:4 70:23 72:12 84:9 104:6 126:14 began 8:5, 9 9:3, 9 85:17 behalf 2:1, 8 4:10, 12 5:7 89:2, 3 belief 245:18 246:7 beliefs 50:24 66:4 205:21 223:24 believe 6:13 9:5, 10 10:25 24:10 26:4, 5 27:18, 21, 23, 25 28:5 29:6 30:6 31:25 33:25 34:5, 23 42:16 43:11, 25 44:7 45:13 50:25 54:19 55:21 63:5, 16 64:13, 22 67:11, 12 68:12 69:24 73:3, 19 77:5 79:5 81:22 83:11, 12, 22 87:3, 9, 11 88:24 90:18 98:9 100:14 101:24 104:2 107:18 109:7, 13, 17 110:7 116:15 123:17, 19 128:14, 21 129:4, 6, 7, 8 130:24 131:12, 13 132:25 135:3 141:22 142:1 147:7 150:24 151:16, 17, 21, 24 154:17 166:19 174:4 181:17 187:15, 22 188:18 191:23 195:21 196:19 198:16 199:3 212:8 220:24 228:18 229:1 246:16 249:22 250:12 251:2, 10 255:19 256:11, 12 259:14, 16 260:5 believed 66:2 71:8 193:8 belt 246:15 beneath 245:22 beneficial 149:22 benefit 232:25 benefits 82:15 best 19:13 50:25 86:3, 7 87:20, 23</p>	<p>103:6, 7 106:5 107:18 132:23 138:25 142:2 145:1 151:25 152:3 169:14 174:24, 25 199:23 242:6 243:17, 18 245:13 263:11 better 118:8 133:2 136:2 143:17 184:3 247:9, 24 248:2, 15, 17 beyond 62:18 66:18 72:17 73:19 166:21 185:11 bias 157:20 158:2 159:4, 11, 13, 18 161:7 170:1, 9, 17 biases 156:11, 24 big 80:11 186:11 bigger 133:10 138:1, 16 201:6 238:22 bio 10:16, 17 11:17, 18 bit 121:13, 19 164:20 179:22 black 165:6, 18, 19 166:12, 13, 23 167:2, 24, 25 168:11, 12 169:18 173:12 blame 139:3 Blank 2:11 5:8 blatant 93:12 blocker 238:13 board 11:13, 20, 24 12:1, 5, 17, 21, 25 13:6, 7, 14, 23, 24 14:1, 2, 3, 7, 8, 13, 15, 17, 18, 21, 22, 25 15:3, 7, 8, 9, 10, 13, 14, 17, 20, 22, 23, 25 16:10, 13, 22, 23, 25 17:3, 5, 8, 23 18:1, 2, 8, 20 19:4, 6, 10, 11, 14, 15, 19 20:17, 18, 20, 21, 24 21:1, 12, 16 22:18, 21, 25 23:2, 8, 21 24:4 25:9, 11 32:19 48:21 49:5, 16, 17, 18, 21, 22 50:2, 11 52:23 53:14, 16, 17 54:4, 6,</p>
---	--	---	---

9 59:25 60:2 61:4, 5,
9 64:8, 14, 23 65:11,
13 66:5, 16 71:13, 14,
18, 19, 20 86:8 87:12
91:11 97:25 100:3,
12, 17, 22 101:15, 19,
22, 25 102:1, 6, 13
103:1, 3, 9, 18, 19, 25
104:8, 21 105:6, 7, 12,
23 106:3, 5, 6, 10, 14,
15, 16, 25 107:4, 9, 11,
12, 13, 17, 18 108:2, 6
126:16 142:21
143:23 152:19, 24
153:2, 4, 12, 22 154:7,
14, 23 156:12 157:4,
5, 24 172:11, 13, 20
180:16, 18 181:1, 22
182:8, 10 183:1, 6, 12
184:3, 15 185:12, 15,
20 186:10, 23 187:5,
22 189:5, 15 190:12,
13, 22, 23 192:2, 3, 8,
9, 14 193:5, 8 194:2,
16 196:12 204:13
205:1 206:19 207:18
208:1 209:8 211:20,
21 212:10 213:3
215:11, 13 216:14
223:16, 25 224:20
227:24 228:13, 18
229:7 230:3 232:5, 6
237:12 242:23
243:15, 16, 19, 21, 24
244:2, 10 245:18, 21
252:13 253:7, 22, 24
254:22 255:2, 13, 21,
22, 25 256:21 257:3,
4, 5, 10, 11, 13, 17, 22
258:6, 10, 13 259:6,
13, 15, 17, 22 260:3,
19, 23 261:5, 7
board's 49:6, 13
50:17, 23, 24 51:10
52:22 53:11 54:9
58:14, 17 64:9 66:3,
5 91:8, 13 100:6, 9
102:3 104:12 106:2,
20 180:9, 14 181:2
182:3 185:17 187:25

191:15 211:24 224:5
234:8 237:8
boasted 162:22 163:5
boasting 163:9
boasts 169:20
Bob 8:16 9:3 18:12
19:1, 22, 25 20:1, 4, 5,
8 23:10 28:21 34:18
36:3, 5 37:11, 12
43:5, 13 46:4, 7, 11,
13, 16, 17, 22 47:3
51:8 67:12 70:1, 17
71:21, 25 78:5 79:16
84:3 179:1, 3, 14
181:6, 15 186:6
188:4, 8, 12, 14, 15, 18,
20, 23 194:3, 5, 10, 20,
21, 22, 24 195:6, 13,
16, 19, 25 196:1, 3, 6,
7, 8 201:24 202:1, 10,
17, 20 204:19, 20, 23
220:9, 17, 22 225:22
226:21 227:1 228:9,
10 229:2, 4 231:4, 25
232:8 234:7 237:12
240:24 241:21, 24
242:16 253:15 254:5,
7, 14, 23 257:19
Bob's 20:2 188:1, 19
194:13
bonus 75:4, 6
bottom 36:21, 24
box 125:18 221:22
Bradley 150:24
198:16
branch 145:13
branches 137:21
breadth 149:10
break 18:16 108:10
114:12 201:8 203:2,
8 205:24
breakdown 219:2
breaking 133:1
Brian 2:17 5:9
227:15, 22, 23 229:3,
6, 10 243:7 252:19,
20
Brian's 228:20
bring 19:21 42:4
51:7 74:1 94:6

103:20 120:3 145:10
149:7 157:11 158:14
bringing 51:3 96:21
150:9 181:14 209:13,
18 210:10 240:6, 7
248:9, 10 249:3
251:23 252:1
brings 146:19 251:14
broke 27:20
brokerage 137:13
brother 168:25
169:13
brought 35:19 54:20
55:2 65:15, 19 66:13
97:1 100:1 102:5
103:24 109:23, 24
110:5, 12 124:5
134:7 156:9, 18, 20,
25 157:3, 14, 22, 23
158:1, 7, 11, 15 159:3
171:19 180:4 185:10
190:4, 9 236:19
239:13, 15 241:14
249:5, 13 250:5
251:7, 16, 20
Brumback 152:18, 22
153:11, 22, 25 154:1,
9 187:23
Buffet 172:6
build 39:20, 22
40:12, 14, 21 41:18
47:8
building 100:8
137:20
bullet 149:2, 24
152:1
bullying 159:24
bus 209:7, 25
business 9:19 21:16
25:2, 13 82:6 101:25
103:6 109:6 113:9
117:1, 9 128:11
133:8 134:20, 25
135:3 136:7, 11
137:13, 24 138:3, 4,
11, 14, 23 139:6
141:3, 25 144:17
145:10 148:11 150:2,
16 151:2, 3 175:4, 10,
15 176:3, 25 177:5

182:17 190:21 198:6,
13, 14, 21, 22 199:9
businesses 13:19
25:17 77:13 145:9,
20 147:11 198:19
Butera 240:1
buying 197:12

< C >

Cabin 194:5, 11
196:4, 21, 24
calculated 121:1, 10,
17 131:23 133:14
calendar 16:1, 11
17:9 84:17 177:13
179:6, 8 256:17
calendar-based 15:18
call 13:17 20:21
57:2, 25 58:21, 25
104:16, 18 105:7
106:12 152:17 162:8
181:2 199:20 212:13
221:23 232:19
240:14
called 16:16 50:11
91:10 110:4 111:24
123:19 171:12
172:22
Calls 33:17 54:2
62:3, 13 167:17
Canada 10:3, 4, 6
candidate 65:22
107:19
candidates 108:3
Cap 21:3
capabilities 101:21
102:6 149:11 172:11
175:2 190:16 217:17
222:18 224:21
233:11 234:12 239:2
capability 235:13
capable 202:7
233:16, 21
capacity 44:15 187:5
capital 16:5 19:1, 25
22:19 26:2 28:11, 17
32:6 127:2 158:11
179:5 204:19 216:10
230:14 234:7 242:24
244:11 252:14

<p>253:17, 21 254:24 259:7 Caption 264:3 captioned 264:8 card 137:24 214:9, 17, 20 215:1, 13 216:3 218:8 221:11 222:9, 10 224:14, 16 225:16 226:5, 8 244:24 245:17 cards 18:21 19:22 215:9 216:5, 8 career 34:15 80:17 81:8, 20, 21 102:15 105:14 110:11 143:7 190:3 235:5, 7 careers 238:23 Carmichael 1:15 3:3 4:3 5:12, 19, 21 7:11 10:13 28:18, 22 29:11 32:19 36:18 37:5 61:20 84:21 88:19 89:11 91:9 96:5 106:7 107:2 110:17 113:15 114:24 120:7 123:2 124:20 127:8 130:3, 7 132:6 140:8 152:11 155:13 163:13, 15 166:10 176:20 177:10 194:6, 25 201:19 204:2 206:7 212:22 215:9 223:12 230:7 242:19 244:6 249:3 252:9 253:11 254:19 259:2 260:14 262:12 264:19 265:24 266:24 C-A-R-M-I-C-H-A-E-L 5:21 Carmichael's 88:3, 22 Cary 250:10, 11 251:4, 5 CASE 1:7 4:4, 7 6:15 7:20 8:1, 13 28:16 42:16 66:5 81:10 94:12 113:22 116:10 121:2 129:8 143:3 152:22, 23, 25</p>	<p>153:10, 15 160:24 187:15 207:13, 14, 16 208:19 209:4, 11, 19, 20 234:5 235:1, 14 264:3 cases 13:9 148:11 248:19 cast 247:12 casual 179:20 categories 239:2 categorize 241:2 category 226:14 240:24 cause 182:24 209:2 caused 90:19 180:12 207:1 cell 37:10, 11, 15 Center 1:19 2:12 88:2 138:15 Central 9:22 CEO 11:1 12:8, 11, 15 13:14 14:13, 17 15:5, 6, 7, 8, 9, 11, 19, 20, 21 16:19, 25 17:1, 4, 6, 12, 18 18:3, 4, 9 24:21 26:25 27:4 28:5, 6 30:25 34:3 43:16 44:3 49:18 50:16 51:2 53:1 54:25 55:12 57:23 58:13 59:5 60:8, 10, 18, 23 61:11 63:22 64:6, 12, 15, 24 65:12, 20 66:4 67:1, 19 69:25 70:9, 24 71:5, 6 81:23 83:21 91:2, 12 97:10, 11 98:3, 11 99:20 100:4, 7, 15 101:3 102:2, 15 103:4, 11, 13 104:3, 5, 22 106:1, 6 107:1, 16, 21, 22 109:10 112:15 113:9 122:14 124:10 125:8, 14, 23 126:14, 15 132:16 142:15, 25 147:17, 18 153:6, 24 154:9 157:12, 17 178:15, 20 180:20 183:9 184:4, 13, 18, 24 185:4, 7 186:19</p>	<p>187:8, 20 189:11, 13 191:10, 15, 18 192:4, 5, 15, 24 193:1, 2, 11, 14, 15, 19, 22 194:7 195:2 206:10 211:15, 22, 25 212:7 215:18 216:19 219:15, 18 221:19 222:25 223:4, 7 225:20 226:11 227:9 228:1, 21, 25 229:3, 13, 21, 22 234:21 235:1, 17, 21 236:2, 23 237:4, 6, 7, 8, 19, 25 238:1, 18 241:21 243:6, 13, 19, 21 245:22 246:17 247:23 252:17 259:21 260:2 261:11, 17 CEO/president 27:19 212:6 CEOs 53:3 190:20 CEO's 225:19 243:2 certain 15:9 26:13 76:15 152:2 159:18 174:18, 19 182:24 209:14 221:22 Certainly 89:21 140:1 259:25 certainty 221:1 certified 5:14 certify 263:7 cetera 209:7 CFO 76:16 CFPB 133:19 134:1, 4, 11 135:24 chair 10:7 12:2 13:24 21:2, 3 23:12 46:6 154:20 chaired 154:4 chairman 11:1 12:17, 21, 24, 25 13:2, 3, 4, 6, 8 14:10, 15, 17 15:12 32:19 43:22 44:1 49:22 chairs 23:8, 18 challenge 186:11 200:6 challenged 99:7</p>	<p>challenges 118:12 125:19 136:8 139:7 151:4 200:18 challenging 200:2 chance 38:3 71:23 158:13 195:22 210:16 change 24:16 86:6, 21 87:23 105:24 117:22 121:13 128:6, 11 143:3 176:13 226:22 232:8 243:25 247:5 252:24 265:4, 7, 10, 13, 16, 19, 22 266:4, 7, 10, 13, 16, 19, 22 changed 12:24 15:6 74:11 133:3 176:15 225:15 226:9 227:2 247:1 changes 5:3 32:14 117:16 128:13 200:17 205:19 226:17 231:15, 20, 24 264:11, 14 changing 128:7, 8 character 164:22 characteristics 227:25 241:12 characterization 170:4 characterize 162:2 charge 129:5 Charlie 150:24 198:16 chart 26:5 187:18 252:17, 18 Chase 229:12 check 73:15 check-in 178:2 182:15 chest 161:22 163:7, 11, 24 Chicago 137:18 150:3, 10 202:3, 13 chief 10:23, 24 22:25 24:12, 15, 18, 19, 20 26:3 28:10, 13, 19 32:18 43:5 84:4 127:19, 21 131:1, 12,</p>
--	---	--	---

<p>15 133:1 149:13 153:16 183:13, 19 203:5 Chris 249:18, 19, 20, 21 250:7 Cinci 36:10 38:4, 21 Cincinnati 1:20 2:6, 13 7:7 31:17 33:1, 4, 7 34:4, 6 35:4, 20 38:15 41:13, 25 42:4, 7 43:16, 20, 22 44:1, 4, 5 45:12 80:23 110:5 141:7, 9 263:13 Cincinnati's 34:10 CIO 149:17 Cioffi 2:8 4:14, 23 5:3, 6, 7 8:18, 21, 23 29:23 30:2 33:17, 21 39:8 44:20 47:1, 24 50:4 51:15, 25 52:6, 9, 11, 17 54:1 57:6, 18 59:6, 13, 18, 21 62:3, 13, 17, 21 63:8 64:16 65:1, 25 70:10, 14 76:2 78:16, 24 80:5, 8 87:6 89:7, 15 90:6 91:17 92:5, 17 93:1 94:23 95:3, 8, 21 96:1, 6, 17 97:3 98:14 100:18, 23 103:15 104:24 105:17, 22 106:14, 19 107:3, 7 108:9, 17 112:3 114:5, 11, 14 125:6, 25 129:17, 25 131:20 138:20 139:13 154:10 158:3, 9 160:22 164:15 165:7, 20, 25 166:3 167:4, 16, 20 168:2, 18 170:2, 11, 18, 21 171:2 173:2, 6 175:6, 16 176:5, 11, 16 191:22 195:3 205:23 206:12 209:3, 12, 21 210:5 212:18 213:22 214:2, 19 215:4 218:6 226:18 230:10</p>	<p>240:18 Cioffi's 92:23 circle 113:1 141:1 144:23 145:6 146:3, 4, 6 161:20 162:12 163:19 250:1 circled 188:8 195:21 circulated 226:25 circumstances 165:9 167:6, 10, 14, 23 168:10, 13, 15 169:4 claim 6:8, 10, 11, 13 29:5 30:6 79:13 89:14 90:3, 5 95:18, 25 96:1, 20, 21, 25 97:21, 22 99:20 236:6 claiming 89:25 91:4 95:24 claims 28:24 30:2 91:3 93:12 94:6, 14, 20, 22, 25 95:1, 17, 19 96:23, 25 97:8, 15, 19 98:5, 8 99:15, 17, 19 100:1 clarification 22:3 23:19 136:4 158:9 173:3 clarify 12:4 27:10 29:23 170:23 clarity 119:4 141:9 177:2 232:4 class 62:7 159:23 175:22, 24 classification 48:12 61:24 62:2 clear 7:3 40:1 44:18 52:18 67:25 68:2 73:4 76:10 89:18 107:9 119:2 134:24 158:4, 10 173:18 176:16 189:3 222:23 237:13 257:10 260:25 clearer 108:8 clearly 92:6 118:22 188:23 189:14 193:23 clever 171:14</p>	<p>client 149:3, 8, 18, 19 clients 149:3 close 153:6 197:10, 13 205:11 228:24 closed 197:8, 13, 25 closely 20:24 123:14 clubs 74:8 clue 54:10 126:5 216:11 217:12, 15 230:4 clunkiness 200:22 coach 222:17 226:15 239:3, 7, 9 240:4, 17, 22 241:2, 3 249:4 251:19 coaching 31:3 119:17, 21, 23, 24 120:4 143:9 171:1, 2 collaborates 139:6 collaborative 139:19 Collin 5:8 color 166:15, 16 168:23 169:16 combined 26:23 31:20 come 20:22 32:3 46:2, 25 57:1 81:5 88:8, 15 116:7 119:6 124:5 157:18 179:11 195:21 197:3 205:25 216:23 218:16 236:13 257:11 258:21 comes 80:21 175:3 182:14 comfortable 51:6 183:9 coming 16:22 50:8 60:13 81:2 118:14 121:19 command 147:11 Commencing 1:18 comment 68:20 97:8 112:20 159:23 160:10 168:24 169:2 173:8 184:23 256:22, 23 257:21 commenting 173:11 comments 47:15, 19 68:13, 15, 16, 17, 19</p>	<p>80:25 99:5 113:7 116:12, 13, 14, 17 122:3, 18 135:7 136:23 141:15 163:9, 16 182:16 commercial 108:21, 23 109:7 145:9, 11, 20 151:3, 8, 18, 19, 22 198:20, 21, 23 199:8 200:1, 5, 6, 19 202:23, 25 203:10 218:12 222:13 226:10 232:19 245:5, 9, 25 246:6 247:2, 8 Commission 263:18 commissioned 263:6 committed 138:24 141:25 185:16 committee 21:3, 4 22:15, 22 23:8, 17, 18 41:11 127:3 154:2, 6, 20, 24 157:1, 23 158:15, 17 164:3, 12 178:11, 15, 18 179:2 234:19 250:8 256:8, 13, 14, 15, 19 257:20 258:5 committees 15:1 153:25 154:3, 16 155:3, 4 256:11 common 21:4 99:12 communicate 55:24 78:3 79:19 205:1 communicated 20:14 21:22 23:4 32:15 36:6 68:10 74:19 77:4 188:15 194:10 206:8 220:13 228:9 communicating 79:7 136:11 153:19 communication 9:12 22:1 23:3 24:3 79:16 84:3 117:3 119:10, 11 120:1, 2 communications 9:7, 13 14:1 45:10 186:1 community 35:3, 5 94:16 112:13 companies 51:5 199:24</p>
---	--	--	---

company 6:4, 5, 9 10:8 13:9 34:5 39:6 53:1 55:13 70:21 72:22 73:11 74:3, 12 76:1, 7, 12 82:10 86:3, 7, 13, 14, 17 87:10, 11, 24 88:12, 14, 16 90:21 94:7, 8 98:4, 25 99:1, 21 100:1, 15 106:5 108:20 113:11 122:1, 12, 22 132:3, 17 133:10 134:22 137:11 138:13, 25 142:2, 6 145:8 147:2, 6 153:18 156:4, 20, 23 157:9, 17 158:5, 20 174:25 183:9, 24 184:25 190:2 191:1, 10 193:11 211:25 217:2 235:2, 19 238:10 239:1, 12, 16 241:18 243:21 249:7, 11, 22 company's 87:14 117:21 compare 261:21 compared 231:15 comparing 215:20 compensated 76:25 78:12 82:1 compensation 22:19 31:20 32:5, 7, 13, 15 72:20 73:19, 25 74:6, 17 75:5, 14, 16, 18 77:1, 5 79:6, 14, 15 80:4 81:6, 9, 13 82:14 competencies 112:12 123:6, 9 131:4 competency 123:10 190:11 competent 82:3 competing 189:22 competitor 189:20 competitors 103:23 189:19 236:22 complaint 29:17 88:24	complete 16:21 21:19 24:5 263:10 completed 61:9 115:8, 11 120:19, 22 Completely 65:1 90:17 169:2 209:15 230:2 completing 144:9 191:7 compliance 22:23 131:1 139:17 compliment 160:20 164:22 169:25 computer 9:18 conceal 50:1 54:15 concealing 50:2 concern 182:24 207:24 258:20, 23 concerned 65:14 162:14 186:25 concerns 14:8 144:1 181:8, 10 CONCLUDED 262:18 conclusion 62:4, 14 93:2, 5, 8 169:23 conditions 168:3 confer 67:17 220:10 conferred 66:23 69:24 confidence 124:15 confidential 4:24 102:19 124:24 confirm 183:5 186:6 194:15 196:9 261:24 confirmation 53:6, 7 197:6 confirmed 188:17 194:18 conform 200:13 confuse 257:10 confused 135:18 136:22 215:6 229:23 connected 36:10 38:14, 20 39:15 40:7 43:24 connection 39:23 connectivity 39:20 40:3, 5, 21 43:23 44:5 47:8 257:4	consensus 100:8 108:6 consider 66:16, 18 94:25 165:11 172:3, 4 174:23 211:1 228:19 245:24 consideration 97:14 106:3 180:10 205:3 229:13 considerations 144:1 considered 14:23 56:21 60:7, 11, 15 61:4 63:22 67:15 97:12 98:3 146:22 180:9, 16 181:20, 24 182:2 183:6 185:19 193:2, 15 196:10, 11 206:18, 21 228:17 237:1 considers 97:22 consistency 42:2 205:2 consistent 139:18 203:11 217:8 220:4, 11, 12, 14 223:24 230:20, 21 232:5 233:6 248:2, 9 constitutes 62:11 159:21 255:16 consult 243:24 consulted 244:2 consumer 70:20 71:1 72:10, 18 73:7, 8, 11, 21, 23 74:1 76:24 77:15 78:2 80:4 82:6, 17, 19 84:22 85:24 86:1, 23 88:4 113:12 134:21, 25 135:15, 17, 19, 23 136:7, 16, 20, 23, 24 137:1, 5, 9, 11, 18, 24, 25 138:8, 9 145:9, 19 151:2, 5, 6, 7, 14 198:21, 22 199:25 201:10 225:6, 8, 10 239:25 consumer-focused 135:21, 22 contact 20:9 21:1 257:19 contacted 254:15 contemporaneous 79:11 context 19:4 52:1 continue 13:12 104:10 116:25 117:6, 11, 13 118:17, 24 133:22 134:5 135:25 136:2 147:24 148:8 184:1 246:8, 19 continued 72:18, 20 75:18 133:25 171:15 continues 105:7 112:21 134:2 143:16 221:17 222:11 223:3 248:8, 13 continuing 107:13 continuity 45:22 contradiction 39:10 210:8 contrary 39:4 257:1 contribute 198:25 contributes 147:7 control 100:12 162:17 220:16 256:20 257:16, 21 258:6, 12 controlling 257:6 258:9 controls 133:22 conversation 8:13 21:13 23:15 34:1, 2 35:18 40:8 43:6, 15 44:10, 24, 25 45:1 46:3, 4, 7, 14, 15, 16, 19 47:6, 11, 13, 21 48:3 53:12 56:9, 13, 16, 23 57:5, 13, 15 58:2, 4 60:5, 9, 19, 20, 24 61:1, 10 64:8 69:2 71:10 75:10 77:10, 19 78:5 83:5, 9 87:3 88:10 178:2 179:8 180:8 181:6, 7 184:20 185:6, 12 186:8 187:3 188:4, 10, 12, 15, 17 193:12 194:3, 10, 13, 18, 22 195:6, 9 196:2, 3, 6,
---	---	---

17, 19, 23 197:1, 6
202:16, 19 209:15, 17
210:9 211:7, 21
217:7 220:22, 23, 25
237:1, 5 256:3, 25
257:14 258:3
conversations 8:10,
16 9:6 15:12 19:15
21:10 22:25 23:1
43:12 46:21, 25
47:19 53:19 55:17
58:7, 19 59:2 67:20,
24 69:18, 19 70:3, 5,
7, 18 79:11 84:6, 10,
11 97:10 154:8
179:24 181:14
188:21 195:11 202:4
205:3, 21 220:17
223:24 224:3 228:11
230:3 255:24
COO 26:7, 8, 10, 21,
22, 24 27:1, 2, 7, 11,
15, 24, 25 28:2, 3
129:2 226:11
COO/president 27:20
coordinated 14:5
15:18 16:10
cop 201:6
copy 204:8 230:10
253:16 254:23
copying 254:22
core 53:5 112:10
139:20, 22 140:3
151:21 190:10 199:8,
9, 10, 15, 18 200:1
202:23, 25
corner 36:22, 25
corp 151:21 232:22
261:1, 2, 8
corporate 14:19
144:21 149:7, 9
212:15
corporation 28:12
138:17 147:19
149:23
corral 23:2
correct 10:2 11:4, 5,
8, 12, 14, 23, 25 12:6,
10, 12, 13, 15, 16 13:1,
2 14:14 19:12 24:13,
14 27:7, 13, 14 30:7,
16 31:17, 22, 25 32:9,
22, 23 33:1, 2, 5 34:2,
9 37:8 38:9, 16
42:15 47:3 53:15
72:5 74:16 79:12
105:16, 21 106:10
110:24 111:5, 13, 14,
16 112:24 113:4, 6, 7,
23 115:12, 13 116:15,
19 120:17, 18, 21, 24
121:7 127:15, 23
129:4 130:4, 17
131:13, 19 132:13, 19
135:1 137:2, 6, 7
139:9 141:18, 20
142:15 172:14 174:6
194:1, 2 197:9, 18
198:4 201:1 202:20
203:15 204:13, 14
205:17 206:11
212:20 213:20
214:10 215:25 216:3,
7 219:18 220:15
222:9 223:1, 9 224:9,
15, 21, 22, 23 226:7
227:3, 10, 11, 14, 16,
17, 20 236:9 242:4
243:4 245:1 255:13,
19, 23 261:1, 6
correction 110:22
corrections 264:11
correctly 232:18
counsel 4:8 8:20, 24,
25 9:4 11:15 33:18
44:20 51:16 59:7
62:18 89:19 92:1
96:8 108:9 114:11
153:21 165:25
167:16 173:2 176:5
196:19 205:23 209:3
212:18 213:22
214:19 215:3 218:17
225:18 230:10 262:2
counsel's 8:21, 22
counterclaim 28:23
29:3, 7, 14, 18, 21
30:6 45:15 61:21
66:22 71:12 72:9
75:12 77:8 78:15
79:10 89:12, 16, 17
90:6, 10 91:20 92:6,
18, 25 95:4, 5, 9 97:4
counterpart 23:9
country 74:8 145:24
175:23
counts 102:10
COUNTY 263:3
couple 83:13 162:25
176:21 178:23, 24
211:23 220:21
223:22 231:16
235:25 254:2
course 21:16 69:7
176:16
COURT 1:1 4:4
6:20 88:22 89:3
92:19
court's 59:8
cover 219:14
covered 15:17 134:23
create 75:1 80:18, 19
96:15, 16 245:13
creates 200:16
credit 23:1 24:17, 19,
20 137:24 199:11, 17
200:19 202:5, 23
203:5
criteria 235:9 241:8
242:3, 12
critical 112:22 192:5
248:13, 20
criticism 191:24
192:12
criticisms 191:20
crystal 189:3
crystallized 141:12
CSRs 145:12
cultivates 251:14
cunning 171:14
current 151:3 187:2
237:21 244:17, 19
252:25
Currently 4:18 7:11
249:10 250:7
curriculum 174:10
Customer 140:2
customers 138:15
200:9, 13
customizations 200:10
customized 200:7, 12
cut 225:24

< D >
damage 90:19 93:10
damages 89:12
90:25 91:16, 21, 22,
24 92:4, 7, 10, 15, 24
93:9 94:1 96:22
dashboards 25:9
data 16:6 100:11
117:23, 24 118:1, 17,
21 131:14 205:11
214:12 223:23 224:2,
8, 21 257:16 258:14
database 53:3
data's 230:21
Date 1:17 83:9
101:13 109:1 159:5
177:18 231:5 254:4
255:3 262:14 264:2
dated 111:15 213:9
dates 110:13 162:10,
11
day 16:12 19:3 25:1
48:20 59:9 63:21
64:1 71:9 75:14, 15
79:5 80:21 81:21
83:18, 21 88:11
90:22 91:3 94:5, 17
101:22 117:12
166:17 171:10, 17
172:3 193:5 195:21
196:25 209:6 215:18
228:17, 19 239:8
263:14 264:16
days 83:13 196:25
211:3 255:15
Dayton 9:21
DDI 123:6, 8, 19, 20
deal 197:25
dealing 87:2 197:23
debated 238:13
decade 251:25
decades 238:7, 8
deceitful 162:1
December 17:7, 22
18:6, 9 48:18 49:21
50:12 106:10 107:6

<p>180:17 204:6, 14, 16, 22 206:23 210:18 253:22 256:8 259:8, 23 260:3, 19, 24 decide 50:2 decided 74:20 76:23 142:21 decision 19:11 49:6, 13, 17 50:13, 23 51:2 53:8, 11 54:9 58:14, 15, 16, 17 59:25 61:5 63:7, 9, 18 64:14 66:3, 5, 6, 10 78:1 85:22, 23 91:6, 8, 11, 13 97:25 100:9 101:21 104:12 105:22 106:15, 17, 25 107:5, 10, 11, 13 108:2 132:25 139:16 142:21 143:22 148:19 174:23 175:2 182:3 184:4 185:17 188:1 216:7 245:10, 22 256:16 decisions 60:2 63:2 64:2 99:1 100:13 102:9 103:3 118:12 139:17 146:20 159:17 174:17 199:17 203:9 245:22, 23, 24 deck 101:11 124:14 204:17 205:11, 19 212:5 214:1 215:9, 11, 21, 23 217:4 219:6 221:5 225:17 229:20 231:7, 9, 15, 19, 20, 22 232:4 253:20 254:4, 11, 16, 23 256:1 decks 101:10 187:10 220:18 225:21 DECLARATION 264:5 declare 264:6 declining 45:12 deep 44:4 103:21, 23 146:19 147:5 189:18, 19, 21, 25 190:3, 14,</p>	<p>15, 16 deepen 147:24 deeper 180:3 deeply 138:23 141:25 default 212:10 defend 94:13 defendant 5:13 Defendants 1:10 2:8 5:7 152:16 defendant's 88:20 152:13 defer 92:1 deficiencies 193:10 deficient 192:23 define 236:4 defined 150:1 192:8 238:19 241:7, 23 246:2 defines 18:19 defining 33:18 definitely 56:19 71:25 81:7 119:5 195:23 definites 182:23 definition 51:17 88:12 118:7 160:3, 6, 9 161:11 170:19 173:3 237:20 definitions 238:5 240:16 degree 9:18, 19, 22 demeaning 159:23, 25 160:16 demonstrate 119:1 245:18 248:2 demonstrates 131:25 demotion 33:14, 19 department 32:6 124:6 156:22 165:13 departure 98:19 dependent 26:9 depending 24:22 26:14 28:5 148:12 depends 26:17 118:25 Deponent 2:8 deposed 5:14 Deposition 1:15 4:3, 17 5:22, 25 6:2 7:15, 18 9:11 36:20 52:2,</p>	<p>3 262:18 264:1, 8, 12 265:1 266:1 deposits 199:16 depth 236:21 derogatory 159:22 described 85:15 203:19 241:25 describes 241:25 description 237:17 design 26:10 73:16 212:2 256:15 desires 174:21 180:13, 14 detail 205:7, 16 208:18 Detailed 102:18 determination 167:15 168:16 212:11 234:4 243:22 determine 86:2 129:15 141:4 167:10 174:24 234:2 235:10 237:11 determined 181:1 233:15 deterrence 93:20 94:3 detrimental 62:25 develop 66:12 143:16 190:5 191:11 developed 192:3, 11 193:5 developing 248:11 development 31:13 48:21 71:15, 17 104:11 143:12 215:4, 10 241:4 246:13 developmental 30:21 develops 240:25 deviate 101:23 105:20 deviated 102:13 103:1, 12 104:21 Diamond 172:7 difference 13:5 different 16:20 18:19 21:11 22:18, 25 23:1 25:24 26:15 30:20 31:11 34:12 42:9 53:21 70:22</p>	<p>82:21, 22 102:1, 21 108:1 117:15 118:11 119:17, 20 122:14 125:8 128:14 138:6 143:10 151:4 165:23 166:1, 4 168:18 169:2 174:10 176:9 194:12 198:8 199:8, 10, 11, 13 202:22 211:9, 10 232:20, 21 233:7 234:25 237:23 247:15 261:20, 25 differently 34:14 41:13 42:10 difficult 6:23 180:20 208:5 251:18 digest 16:22 digital 147:20 diligence 52:25 Diligent 16:17, 18 diminished 72:19 74:6 direct 21:7 55:3 178:6, 7 directed 175:15 176:3, 25 177:6 199:3 direction 10:10 86:8 105:12 158:16 194:2 198:19 230:3 directionally 224:9 directive 88:3 directly 23:19 24:21 30:25 86:24 132:19, 22 138:2, 3 141:10 151:23 252:5 director 14:3, 6 20:19 152:20 175:7 directors 11:13, 21 13:23 20:11 24:8 32:19 53:18 71:14 152:19 213:4 223:17 224:1 242:24 244:10 252:13 254:22 259:7 260:19, 24 261:5 disagreed 102:21 disappear 176:13 disclosed 90:18 disclosing 207:15</p>
---	---	---	--

disclosure 107:12 152:13	DISTRICT 1:1, 2 4:4, 5	233:16, 21	ebb 117:17 131:23
disclosures 88:22 89:2 93:15	diversity 155:21 156:8 158:22 178:22	dollars 72:14	233:9
disconnect 135:14	DIVISION 1:3 4:5	door 195:20	ebbs 235:6
discovery 62:19	111:24, 25 128:8, 9	doubt 77:25 82:7	educate 156:25
discrepancies 230:22 232:2	document 18:14	121:23 258:20	education 9:17
discrimination 28:24 62:12, 22 63:2 89:14	29:13 30:7 32:2, 16	draft 204:10 205:5,	23:23 157:6
90:1 94:21, 25 95:18	58:6 87:6, 8 88:23	9 212:19 213:3, 9	educational 120:2
97:1 98:7 99:15, 19	89:8, 18 91:18 92:5	214:1, 8 215:22	EE 116:18
174:3, 15 175:21, 23	105:4 111:6 112:3	217:23, 25 219:16	Effective 9:24
177:6	113:18 114:5 115:2	220:7 221:4, 13, 20	112:13 222:18
discriminatory	123:5 124:16, 17, 23,	222:10 223:16, 20, 21	226:15 239:3, 6
168:24 173:17 174:5	25 125:1, 3, 10, 12, 17	224:8, 17, 23 226:22	effectively 136:11
discuss 7:20 71:15,	126:1, 6, 11, 18, 19, 20,	230:14 231:7, 8, 18	effectiveness 115:22
18 206:25 231:11	22 127:11 129:17, 25	232:15 242:23	effort 133:25
discussed 5:1 7:23	130:10 131:20 132:9	244:10 246:22, 23, 24	egregious 94:14, 19
8:1 65:18	138:20 139:23	252:13 253:1, 20	95:1, 16, 19, 25 96:22,
discussion 18:7 19:9	140:11, 14 141:19	255:5, 6, 7, 8 259:6	25 98:7
44:24 50:12 60:16	152:12 155:16, 19, 25	drafts 204:24 205:13	eight 25:23 124:12
63:20 77:1 97:20	158:23 160:23	220:21 225:23 226:2,	Eileen 153:1, 3, 9
101:12 104:7 124:24	175:16 176:7 185:16	23, 24 230:19 243:12	154:21 155:2
154:14 175:3 177:20	186:10 204:5, 24	253:4	either 159:3 200:13
179:11 180:3 182:14	205:7, 16, 24 213:2,	drastically 117:22	elaborate 206:17
185:1, 3, 23 186:24	14, 23 218:3, 18, 23,	draw 119:12 135:14	elected 12:17 52:24
191:14, 16, 17 206:23	24 219:1, 16, 19, 22	driven 16:1, 2	elects 49:17, 18
211:9 215:12 224:20	220:10 221:7, 9	driving 191:7	elements 26:15
227:24 228:12 238:7	222:5 223:19 226:13,	drove 200:22 211:10	elevate 43:22 64:11
242:12 243:15	16 227:17 228:4	due 52:25 73:4	77:15 78:11 107:16
245:21 247:16	230:16 236:23	duly 5:13 263:5	116:25 117:13
254:12, 13, 14, 16	241:24 242:2, 22	duties 10:9 13:16, 22	119:10 133:22
262:9	243:5 244:9 252:12	14:16 16:25 17:4	135:25 143:20 228:1
discussions 8:4, 7	253:13 255:9 260:6,	24:15, 16 26:8 28:9	233:2 234:25 235:25
9:2 19:7, 16 20:9	8, 22	30:17 111:21 133:6	237:19, 24 238:1, 9,
44:9 49:4 86:13	documentation 19:23	duty 24:21	10, 16, 22 240:11
90:23 97:25 100:9	39:3 75:9 160:9	dying 169:18	241:18, 20 246:8, 16
102:16 119:6 153:19	172:17 185:12	dysfunctional 199:21	248:8, 13
154:13 155:21	259:22 260:3, 9	< E >	elevated 43:21
190:13 192:21	documented 18:11	earlier 48:19 79:1	137:23 151:20
231:19 253:6 254:9	58:4 68:13 177:24	180:13 181:5, 25	178:21 228:21
255:20 260:7	documents 7:17	202:11 205:12, 13	elevates 240:25
dispute 37:14 42:20	129:19 216:9	206:16 207:2 210:14	elevating 118:2
210:11	doing 62:24 83:14	226:1 235:4	elevation 77:11 241:4
disputed 209:16	86:11 103:10 117:19	early 28:7 190:2	eloquent 173:13
Distinguish 14:16	121:14, 22 122:4, 13	195:21 211:5	E-mail 2:7, 14 6:3
15:4	133:21 141:24	earnings 221:23	9:15 22:6, 7 39:9
distribute 253:24	142:19 144:12	ears 150:20	231:4, 5 253:15
distributes 139:3	150:14 174:19	easier 199:25	254:6, 21
	185:16 193:18, 19	easily 235:6	e-mails 9:7 21:25
		East 2:12	185:25
		easy 199:25	embodied 162:21

embodies 164:21
embraces 164:20
emergencies 209:6
emergency 17:12, 20
 18:16, 18, 20 19:10
 61:4, 7, 12 97:12
 105:5 180:10, 16, 18,
 25 181:4, 8, 9, 21, 23
 182:4, 5 183:2, 6, 7,
 23 184:15 185:9, 14,
 18 186:7, 9, 12, 18, 22
 187:1, 5, 7, 11, 13, 16,
 20, 21 188:3, 9, 25
 189:4, 5, 8, 10, 12
 191:19 194:16, 19
 195:23 196:11, 12
 206:9, 19 207:17, 19,
 22 208:1 209:5, 21
 210:20 211:6, 14, 16,
 17 212:1, 2, 14
 217:13 219:23 223:7
 224:5 227:19
emerging 189:23
Emerson 152:18, 21
 153:11 154:18, 25
 187:22
emphasize 179:10
Emphasizing 52:9
employed 9:23, 25
 13:8 30:13
employee 6:8 87:10
 102:25 115:25 116:3,
 4, 18, 22 117:7 118:5
 119:8, 22 138:22
 140:3 165:6, 18
 166:12 167:24
 168:11
employees 87:15
 119:18, 21 145:2
 172:1 233:13 239:23
employer 99:7
employment 10:17, 20
encourage 21:6
 117:10
encouraged 20:23
 23:3, 14 24:4
encouraging 148:16
ended 12:11, 13
 182:7 211:4

end-of-year 186:15
ends 93:17
engage 50:13 116:6
 165:13
engaged 90:1 98:6
 118:7 135:23 151:9
 159:6 199:2, 4
engagement 115:25
 116:3, 4, 5, 19, 22
 117:1, 7, 13 118:5, 20
 119:1, 8, 22 140:3
 144:2
engaging 153:21
enhance 143:16
enhanced 120:1
enjoyed 21:13 85:6
ensure 73:18 78:9
 139:17 144:25
 146:21 149:24 150:2
 152:1
ensured 142:9
enter 45:19
entered 129:13
entering 48:4
enterprise 22:13, 14,
 15, 22 23:10 24:6
 26:5 34:17 35:19, 20
 41:7, 8, 9, 10, 15
 42:11 123:6, 8 124:9
 141:10 156:3 164:3,
 12 178:11, 17 179:2
 234:19 235:2 238:17
 240:6 250:8 256:8,
 10, 13, 14, 18 257:20
 258:5
entertainment 146:9
entire 264:7
entities 16:20 17:15
 26:15 49:9 151:11
 159:6 261:4
entitled 85:7, 9
 168:5 210:12 233:12
entitlement 85:8
entity 35:4
entry 145:20 177:13
environment 144:7,
 14
epitome 139:5
equal 93:19

equate 166:18
 168:23 169:16
equity 32:12
Eric 250:19, 20
 251:2, 4, 25 252:1
Eric's 250:21, 25
Erie 2:6
ERRATA 264:1, 13
 265:1 266:1
erroneous 90:17
 93:10 214:8 222:6
 250:3
error 205:20
especially 23:8
Esq 2:1, 4, 8, 17
essentially 198:3
 261:15
establish 40:5 41:17
established 237:7, 8
et 1:9 4:6 209:7
 264:4
evaluate 18:20
 242:12
evaluated 193:19
evaluating 134:12
 193:17 248:10
evaluation 235:11
 249:4
event 18:18 19:10
 145:7, 23, 24 146:6
 157:22 162:15 181:4,
 24 183:1 184:2
 189:4 196:12 229:18
 230:1, 19
events 14:5 16:1, 11
 144:21, 25 147:9
eventually 109:14
Everybody 175:11
 240:2 251:17
evidence 63:9 98:15
evolve 15:8
evolved 147:9 174:7
evolving 253:5
EVP 10:7
exact 35:10, 13
 37:22 69:11 74:17
 101:13 141:11
 177:18
exactly 42:6, 19, 24
 68:24 69:6 71:22

85:3 109:1 127:1
 128:12 136:21
 141:14 146:25 153:5
 154:20 155:22 159:8
 185:13 208:9 231:23
 255:14
Examination 3:4
 5:17
examined 5:14
example 25:25
 107:24 119:9 144:23
 221:23 236:20
 239:24
examples 22:19
 63:24 119:14 168:22
 178:24
exceeds 129:23
 131:18, 22 133:14
excellent 74:4 172:9
 232:17
exception 224:18
exceptionally 53:4
excess 72:14
exchange 37:6, 17
 45:9 46:10, 17
 201:24
excited 190:25
excuse 10:4 65:9
 110:20, 21
excuses 139:3
execute 74:10
 147:12, 14 182:6, 8
 183:7 185:18
executing 147:21
 191:6
execution 152:2
executive 10:7 12:2,
 25 13:3, 4, 6, 8, 13
 14:20, 25 15:2 17:8,
 10 21:11, 17, 19
 22:12, 13 30:13
 32:18 43:6, 9 44:15
 45:16 46:5 48:9
 53:17, 18 71:15, 17
 72:1, 12 74:8, 10
 76:22 83:7, 25 102:7
 144:20 146:19 147:1,
 2 161:15 183:13, 18,
 20 193:6 202:7
 213:4, 10 223:17

<p>228:11, 22, 23 230:14 231:6 234:19 235:2 239:11 242:24 244:11 247:22 249:25 252:14 253:18, 21 254:24 259:7, 19, 25 261:11, 17 executives 66:23 67:4, 5, 9 69:24 70:7 72:21 75:25 76:7, 12 143:8 146:14 149:17 161:13 162:8 172:7 177:25 198:1 234:6 246:10, 11 247:24 248:17 249:6 executive's 118:19 exercise 48:18 Exhibit 3:7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 10:11, 14 29:9, 12 36:16, 19 43:1 61:21 88:17, 20 93:15 110:15, 18, 20, 22, 25 111:22 113:13, 16 114:22, 25 120:5, 8, 19 122:25 123:3 124:18, 21 126:24 127:6, 9 128:2, 18 129:16 130:5, 8 132:4, 7 140:6, 9 141:16 152:9, 12 155:11, 14 160:1 173:4 175:14 176:24 177:8, 10 201:17, 19 203:25 204:3 212:16, 17, 23 213:6, 12, 13, 15, 18 214:14, 15 218:1, 20 219:9 221:3, 4 223:10, 13 224:10 227:7 229:15 230:7, 24 231:2 242:17, 19 243:2 244:4, 6, 21 246:21 252:7, 9 253:9, 12 254:17, 19 258:24 259:3 260:11, 12, 15, 16, 20, 25 261:12, 16 262:6</p>	<p>EXHIBITS 3:6 212:23 260:14 exist 17:15 183:4 existed 171:19 exists 255:5 exit 239:16 ex-New 156:21 expand 145:10 244:17, 19 246:19 expansion 137:20 233:7 expect 57:25 65:15 80:15 112:11, 18 116:23 122:23 148:25 199:2 201:14 261:22 expectation 131:18 224:5 expectations 115:18, 24 121:6, 12 129:23 132:3 133:15 142:10 179:18 200:21 226:1 230:4 expected 86:20, 21 105:8, 9 128:21 144:5 148:7 149:16 199:4 201:4, 8, 9 225:20 expecting 83:19 112:5 expense 150:1 experience 106:4 140:2 142:19 143:20 183:24 184:8 189:14 190:15 236:11 241:21 246:9, 15 251:11 experienced 48:9 experiences 159:17 191:4 192:1 234:11 236:17 246:19 expert 51:4 160:8, 24 expires 263:18 Explain 13:5 125:22 137:9 177:22 209:1 explained 77:11 107:3 explaining 77:23 exposed 156:14, 16 158:12 159:14</p>	<p>exposure 162:14 190:12 221:22 251:11 ex-president 187:23 expresses 160:12 173:10 extended 48:17 extensive 187:18 extent 9:11, 17 69:5, 16 external 23:23 156:10, 20 159:7 extract 94:8 extremely 17:16 114:8 133:23 151:2, 5 190:1, 11 258:8 eye 228:3, 6, 25 229:9, 14 eyes 150:20 211:24 220:8 < F > facilitate 207:25 245:20 247:16 facilitated 51:8 123:13 124:6 204:18 216:9, 10 260:7 fact 39:21 41:24 71:6 80:15 85:9, 21 97:23 99:9 142:17 151:12 152:13 160:19 192:11 209:17 212:4 235:18 237:18 239:14 240:13 241:13, 17 253:3 factor 63:19 64:5, 15, 17, 19, 22, 23 65:2, 3, 11, 13, 15, 16 66:6, 9 90:23 97:21, 24 174:16, 19 249:5 factors 25:3 118:20 171:7 facts 63:8 90:10, 18 98:15 166:21 167:7 168:21 factual 29:25 30:1, 4 90:17 91:5 129:9 153:9</p>	<p>fair 36:2 41:19 45:20 138:8 fairly 173:19 228:23 fall 77:2 false 93:11, 12 94:6, 20 95:1, 16, 19, 25 96:23, 25 97:16, 19 98:7 99:17 100:1 familiar 123:16 124:11 126:17 fantastic 24:3 156:11, 24 157:3 far 20:13 115:18, 24 121:6, 11 138:9 141:13 169:12 208:4 229:13 fashion 16:10 February 32:10 81:15, 16 120:22 180:2 263:19 feedback 14:2, 6 19:6, 7, 8, 16, 17, 20 20:10, 13, 16, 18, 19, 22 21:12, 21 22:2 23:5, 6, 16 24:7, 9 55:8 106:3 254:1, 4, 6, 7 feel 6:19 19:5 38:14, 20 40:5 45:20 82:9 117:5 175:19 felt 39:12, 22, 24 52:24 53:6 54:10 77:2 104:15 132:23 183:6 185:18 192:14 216:15 227:3 243:12 248:21 258:9, 21, 22 FIFTH 1:9, 19 2:12, 17 4:6 5:9, 10 6:5, 11, 13 7:21, 24 8:2, 4, 8 10:17, 21, 22 11:11 13:16 27:7 28:13 29:16 30:13, 14 32:18, 21 36:22 43:4, 6, 8, 9, 17 44:7 45:17, 20, 23 48:9, 10 50:22 51:14 53:23 55:16, 19 57:23 60:18 64:6, 25 65:12, 21 71:14 81:7, 11 88:2, 21, 25 89:14, 25 90:16 91:1,</p>
---	--	---	---

3 93:11 97:2 98:6,
11, 19 99:2, 13 100:4,
7 104:22 107:22
110:8, 22 111:12
113:2, 16, 17 114:25
115:1 120:8, 9 123:3,
4 124:3, 21, 22
125:17 127:9, 10
130:8, 9 131:16
132:7, 8 133:16
135:7 136:5 137:12
138:19, 24 139:22
140:9, 10 142:1
155:15, 17 159:3
160:2, 3 161:6
166:12 167:25
168:11 172:1 174:2,
15 175:4 176:2
177:5, 11 184:8, 13,
18 187:8 190:23
191:2 199:12 201:20
204:3, 4 212:23, 24
213:7, 9, 17 214:6, 15,
17, 25 215:20 218:2,
21 219:3, 9, 10, 12
221:10 222:8, 24
223:13, 14 224:11
226:3 227:6 230:8
232:11 240:21
242:20, 21 243:1
244:7, 8, 13, 23
246:21 250:21, 23
251:1, 8 252:10, 11,
16 253:12, 17 259:3,
4 260:21 261:1, 2
264:4
figure 32:7 93:18
file 94:12
filed 6:15 28:22
29:2, 4, 17 68:23
71:7 79:13 84:5
88:24 89:2, 24 96:3
134:4
filing 28:24 89:13,
17 90:16
filled 141:15 148:13,
17 233:17
filling 112:14 148:20,
23
fillings 105:11

final 77:24 80:1
131:9 184:3 186:15
203:9 204:8, 9, 11
205:8, 9, 17 212:13
222:22 245:21 255:8,
9 259:10, 12, 14, 17
finalize 203:2
finalized 79:25
financial 25:20 26:1
136:8 137:14 138:16
149:25 150:2, 23
189:22 190:20, 23
197:8 198:2 202:18
find 24:18 38:4
90:25 118:24 210:12
247:24 248:16, 19
fine 5:2 108:16
114:13, 16 134:20
206:1
finish 7:1 95:22
184:2
finished 114:14
fintech 189:23, 25
190:1, 2, 15 236:11,
15, 20
firm 158:18, 20
firms 159:6
first 5:13 12:5
29:20 46:8 54:14
59:16 71:7 86:13
87:13 93:16 108:19
116:13 135:10
138:18 141:16, 20
147:24 175:20, 25
212:23 213:12 214:3
219:14, 17 227:12
231:18, 25 232:10
243:5 251:2 252:18
254:13 260:15
261:16
fit 84:20, 24 85:12
199:12
fits 197:19
five 30:20 31:11
35:24 36:1, 7 38:24
39:6, 14, 18, 21, 23, 24,
25 40:2, 10, 13, 17, 19,
22, 23, 24 41:16, 20
45:19, 22, 24 47:7
48:6 70:20 72:21

74:3, 12 75:25 76:7,
11, 14 82:9, 11 86:17
87:19 113:12 122:11,
12 143:10 215:18
219:3, 8 227:22
228:3, 5 246:10
five-minute 205:24
five-plus 153:7
227:15 228:5
fix 200:25 202:17
203:22
flagship 34:4, 13
floor 83:7, 25 147:3
Florida 250:12, 13,
14, 15
flow 117:17 187:18
233:10
flowed 127:17 131:23
flows 235:7
focus 22:10 118:23
221:21 222:1 224:24
241:20 247:19, 20
248:5, 19
focused 116:18, 21
117:11 248:9, 10
follow 70:11 88:2
108:11
followed 80:25
219:20 223:4
following 48:7
192:20
follows 5:15
force 87:22, 23
118:2 144:24
foregoing 263:9
forgot 38:2
form 39:8 51:15
54:1 65:25 70:14
76:2 93:2, 5 95:3
103:15 111:2 113:19,
21 115:4 121:8, 18
124:8 127:12, 16, 18,
22 130:11, 18 131:6
156:17 168:19 175:6
191:22
formal 145:23 178:3
179:25 180:1
format 16:9
formed 104:4

former 157:19
forms 121:13
formula 55:1
Forrest 26:6 130:19,
22 131:2 201:24
202:6 256:19 257:21
258:4
forth 19:14 20:22
25:15 29:7 35:19
65:19 66:13 87:3
90:10 92:6 120:3
124:5 148:17 162:15
179:18 180:4 185:10
191:21 192:19, 22, 25
211:5 224:4 236:7,
19 237:10 238:4
241:5 242:13 257:13
forthwith 207:23
forward 32:14 42:3
61:9 103:25 147:19
179:7 184:1 206:19
254:1 255:18
fostering 191:8
found 162:22 251:9
foundation 175:7
four 66:16 147:24
184:9 219:8 230:18
256:5 257:11
fourth 144:19
fox 161:14, 16, 18, 20,
21, 25 162:3, 5, 9, 16,
18 163:8, 12, 25
164:4, 13, 18 165:6,
19 166:12, 13, 23
167:2, 25 168:12, 23
169:8 171:8, 14
172:23
framework 25:6
Frank 26:6 130:19,
22 131:2, 6 201:24
202:6 256:19 257:2,
20 258:4, 8, 16
frankly 20:2
Frank's 131:2 258:19
free 6:19 63:6, 17
175:19
Friday 83:11
friend's 169:14
front 16:3 26:5
42:23 56:12 67:16

84:17 110:11 151:23
 155:24 159:5 164:18,
 19 166:21 168:22
 180:18 218:22
 256:17
frustrated 99:17
FTAM 113:1
fulfill 122:14
full 11:19 21:20
 139:1 144:19 257:17
full-time 44:2
fully 96:13 139:15
 148:22 182:2
funneled 21:18
furiously 99:14
further 51:3 122:1
future 37:2 60:18
 146:8 147:17 219:3

< G >
game 184:3
gap 191:13
Garrett 249:18, 19,
 20, 21 250:7
Gaunt 108:23 109:13
gene 189:17
general 118:9
generally 202:20
generations 219:3
getting 58:21 81:21
 87:17, 18 117:3
 210:17 230:17
give 7:6 26:16
 32:12 63:24 85:5, 10,
 21 86:4, 5, 15, 16
 98:2 262:1
given 74:11, 15, 24
 82:4 122:1 137:1, 3
 147:13 187:1 233:23
gives 21:7 258:8
giving 86:10 171:4
glass 18:16 49:9
glasses 37:21
glowing 40:9
glue 198:17
go 11:15, 18 17:10
 18:7, 21 26:1 31:7
 32:10, 14 33:6, 14, 20
 35:18 41:5 42:6, 24
 43:2, 19 44:16 48:20

49:6 59:9 61:13
 62:16, 20 70:16
 75:22 79:2 86:17
 90:13 93:4 96:5
 102:17 108:14 112:7
 113:25 117:6 118:14,
 18, 20 121:20 139:13,
 24 143:6 149:13, 17
 154:19 155:6 156:9,
 15 166:8 174:12
 175:1 178:21 182:5
 184:22 187:10 203:1
 206:1 208:18 214:24
 215:17 231:11, 24
 236:21 241:6 248:23
 253:3
goal 161:6
God 80:19
goes 16:14 18:14
 48:17 96:24 150:12
 170:25 187:19 208:4
 228:12 231:10
 253:19
going 6:17 13:15
 14:11 15:16, 17
 19:24 33:23 35:12
 36:7 37:18 38:23
 39:12 40:6, 10, 13, 20,
 22 41:19 42:3 53:22
 55:24 56:8, 17, 24
 57:21 58:1, 9, 18, 20,
 21 60:22 61:15
 67:21 68:6, 9, 14
 69:3, 12, 13, 15 70:25
 73:5, 8, 11, 17, 18
 74:7, 16, 19, 23, 25
 75:14, 16, 19, 22 77:2,
 3, 5, 14, 17, 23 78:2, 6,
 7, 9, 10, 11, 12 79:7,
 17, 19, 23 80:9, 18, 19
 81:1 82:14 83:25
 85:4, 23, 24 87:21, 23
 88:14 93:6 94:4
 96:7, 12 97:7 99:7,
 20 102:17 108:13
 112:7, 8 114:17
 117:16, 20, 21 118:13,
 15 146:10 149:21
 159:1 162:13 165:8,
 10, 14 166:14, 22, 25

167:12 168:4, 14, 20
 169:4 171:6, 21
 176:12 177:15, 25
 179:21, 22 180:11, 17,
 21, 23 181:2, 7, 21
 185:3, 13, 19 187:25
 191:14 193:2, 11
 196:10 198:11 199:1,
 5 200:13, 14 203:3, 8,
 17 205:1, 10 207:2, 4,
 5, 17, 18, 23 208:11,
 13, 18 210:22 215:10,
 20 217:1, 3 226:23
 233:4 234:20, 25
 237:3 243:14 245:21
 248:16, 19, 20 261:13
 262:6
good 9:10 52:24
 71:23 82:4, 5 108:12
 112:17 114:10
 115:16, 17, 20 121:22,
 23, 25 122:7, 8, 9, 13,
 16, 19, 22 131:25
 132:2 142:4 144:6,
 12, 16 147:8, 10, 11,
 22 177:3 181:8
 183:22 184:1 189:9,
 10, 12 190:11 191:9
 199:15, 18 251:22
 254:5
gotten 73:25 204:15
 227:21
governance 17:14
graduate 9:22
gray 168:25 169:11,
 12, 13, 17
great 21:13 35:1
 43:23 100:14, 15
 112:11, 21 113:2, 5
 122:4, 5, 19, 22 139:3
 143:25 144:20, 25
 145:16 202:8 222:17
 226:14 239:3, 7, 9
 240:4, 17, 22 241:2, 3
 246:7, 14 249:4
 251:19
Greatly 146:2 157:5
Greg 28:18 91:9
 106:7 163:13, 15

194:25 202:11 231:7
 256:20 257:21 258:6
Gregory 1:15 3:3
 4:3 5:12, 21 32:19
 88:21 262:12 264:19
 265:24 266:24
gross 73:9, 10 77:16
 138:5
group 79:15 109:24
 110:8, 12 114:1
 133:3, 5 158:11
 160:13 171:25
 173:11, 15 175:11, 12,
 15 176:3, 25 177:6
 204:19 216:10 219:6
groups 139:17 175:4,
 10
group's 119:13
guerilla 85:17, 18
 87:4, 21
guess 62:23 79:22
 136:17, 18 254:13
guides 143:9
Guy 54:22 58:19
 108:7 122:11 200:25
 202:12, 17
guys 82:10 91:12
 122:11

< H >
hair 166:16, 18
 168:23, 25 169:11, 12,
 13, 14, 16, 17
half 29:18 35:8, 11
 203:22
HAMILTON 263:3
hand 146:2 175:1
 263:12
handed 10:13 29:11
 36:18 88:19 110:17
 113:15 114:24 120:7
 123:2 124:20 127:8
 130:7 132:6 135:18
 140:8 152:11 155:13
 177:10 201:19 204:2
 212:22 213:6 223:12
 230:7 242:19 244:6
 252:9 253:11 259:2
 260:14

handled 199:16	2	highly 144:13 258:14	hundreds 51:5
Hang 224:12 246:23	headed 75:3	Hikes 251:3	137:20
happen 21:10, 15	heading 33:15 202:3	hire 236:13 250:3	hypothetical 167:17
53:19 56:25 58:9	headlines 89:6	hired 249:5, 12	168:2, 4
102:23 152:8 191:3	heads 109:6 148:11	250:1, 16 251:2, 9	
202:9 209:6 217:3	health 87:14 186:17	252:5	< I >
happened 42:25	208:16 209:25	hires 249:9	IA 112:21 128:9
46:24 60:19 61:2	hear 6:18 14:3	hiring 190:10 251:5	idea 216:22 217:21
105:13, 23 108:7	15:14	252:1	218:15 220:1 225:18
136:17 154:21 168:7	heard 68:12 161:16,	historical 146:20	251:22
181:5, 18 182:12	18 162:8, 18, 20, 25	147:9, 15, 20	identical 261:18
186:2 195:10 210:9	163:20 164:7 165:1	history 10:20 137:15	262:2, 4
230:5 231:21, 23	197:7 215:8 256:22,	147:5	identification 10:11
243:23 256:5	23, 25 258:17, 22	hit 209:7, 25	29:9 36:16 88:17
happening 23:15	hearing 258:7	hold 87:10 115:5	110:15 113:13
257:24	heart 207:15	212:3 235:8 261:14	114:22 120:5 122:25
happens 17:22 99:10	heavily 102:4 201:9	holder 228:21	124:18 127:6 130:5
180:2, 20 190:20	he'd 35:17 41:5	holding 27:11, 12	132:4 140:6 152:9
233:12 239:21	82:6 94:12 186:8	113:8	155:11 177:8 201:17
happy 99:25 100:2	189:8 194:18	home 34:11	203:25 212:16, 17
hard 234:1, 22	heightened 183:3	honest 68:25 123:15	223:10 229:15
hardship 74:25	207:24	124:11 215:3, 17	230:24 242:17 244:4
80:17, 20 81:1	held 27:11, 16 30:20	226:20	252:7 253:9 254:17
harm 90:20 91:22	34:21 49:5 149:15	honor 160:20 161:23	258:24 260:11, 12
94:7	help 119:21 149:14,	hopefully 16:13	identified 25:3 70:5
harmful 93:10	18 150:21 190:5	hostage 87:10	73:20 96:21 106:11,
Hart 5:8	201:3 217:14	hour 59:16	13 108:4 157:14
HCC 21:6 23:10	helpful 117:24 149:9	hours 228:12	183:8 186:22 187:4,
head 6:22 21:5, 6	Helping 31:6 149:22	house 233:8	8, 14, 17 198:2
22:20, 24 24:12	hereinafter 5:14	Houseman 250:19	211:20 213:25
30:14, 18, 19 31:21	hereof 264:13	251:2, 4	214:20 225:14 252:3
41:11 72:10, 18 73:8,	hereunto 263:12	Houseman's 251:25	identify 10:14 19:9
11, 21, 23 74:1 77:15	hey 21:13 24:1	HR 79:15 123:13, 23	25:23 29:12 70:6
78:2, 7, 9 79:15 82:5,	69:12 179:21, 22	124:2, 6 127:2	110:18, 25 111:22
19 84:22 85:24 86:1,	high 48:9 55:10	165:12 171:21 219:6	113:17 115:2 120:9
23 88:3 109:23	200:7 228:6, 15, 22	220:24 242:10	123:4 124:22 127:10
110:10 113:12, 25	229:8, 12 233:23	hubris 82:24	130:9 132:8 140:10
115:7 120:14 128:1,	234:3, 15 235:6, 14,	huge 137:19 191:13	150:3 155:16 176:24
4 130:15 133:6	19, 20, 24 236:4	Hugh's 177:16	177:12 188:2 204:4
134:25 135:2, 15, 17	238:3, 8, 12, 14	human 19:1, 25	207:21 213:2, 8, 18,
136:19, 20 141:12	239:19 245:3 246:16	22:19 28:10, 11, 13,	20, 24 214:3, 6 218:2
146:7 150:7 151:6, 8,	248:12 257:8 258:8	17, 19 32:6 43:5	219:12 223:14
14, 18 154:1, 5	higher 64:11 238:11,	82:23 158:11 175:7	230:13 231:2 238:8
158:11 179:5 198:13	16, 17	179:5 204:19 216:10	242:22 244:9 245:12
218:11, 12 220:24	highest 72:21 75:25	230:14 234:7 242:24	247:17 252:12
222:12, 13 225:1, 3, 5,	76:7, 11, 14, 15, 18, 21	244:10 252:13	253:13 254:19
7, 8, 10 226:9, 10	139:15 144:11	253:17, 21 254:24	258:11 259:5 260:16,
232:13 239:25 245:4,	234:23 237:24	259:7	22
8, 9, 25 246:5 247:1,	highlight 210:23	hundred 129:9	identifying 69:23
		135:21	73:12 107:14 134:13

imagine 22:23 125:14 155:20	Incorrect 73:7 94:14 137:8	31:13 48:22 56:6 58:11, 20 59:3 67:11, 12, 13, 14, 17 94:6	input 13:13 15:2, 13, 15 100:14 103:3
immediately 85:16 233:21 245:15, 16	increase 77:17 78:7 81:6, 12, 17, 21 90:25	98:20 99:13 102:5 103:19 104:18 108:3	104:17 179:4 232:1
impactful 148:1	increases 80:13 81:15	145:14, 15 151:24 156:10, 18 158:1	insertion {sic 106:24
impacts 145:1	independent 13:11 14:23 15:1 34:14, 16	159:2 178:23 188:2 201:2 238:13 239:15, 16, 17, 18 241:13	installation 45:23
imply 169:17	50:10, 17, 20 51:12 52:23 53:18 54:7	252:5	instance 23:10 119:1
importance 34:21 138:13 156:4	102:7 131:7 152:20 153:2 154:13	individual's 179:19 235:10, 11	instruct 95:11 96:8
important 17:16 18:2, 4 40:9 65:22	independently 130:25	industry 23:20 51:4 99:4 103:21, 24	instructing 229:2, 4
93:18 117:12 118:4, 6 133:23 137:19, 21	indicate 32:17 39:4 40:16 58:11 60:7, 22	190:16 258:15	instructions 7:4 230:5
138:9 191:11 225:11	74:15 112:25 122:3 131:18 136:6 143:24	inflow 24:21	instrumental 151:7
impression 250:2	182:19 183:11 184:6, 12 192:18 253:19	inform 103:9 194:5 245:23	integrate 150:16
improve 117:7 118:4 119:7, 22 248:6, 7	indicated 22:17 27:10 33:3 39:6	informal 24:4 177:23 179:16, 20	integrated 198:10
improvement 119:16	48:3 52:4 59:4 70:8 106:15 198:1 206:7	185:23	integrating 150:21 198:14, 20
improving 116:18, 22 118:23	258:4 264:12	information 4:24 10:23 16:4, 5, 9, 13, 15, 17, 21, 24 17:2, 5, 19 18:12 19:3, 12	integration 149:25 150:1, 12, 14, 22
inaccurate 78:15, 23 94:14	indicates 30:12 31:20 48:25 72:9	20:25 21:1, 18 26:17	151:1, 13 198:6, 9, 17 199:1, 7 200:23
inappropriate 64:13, 23 65:8, 10, 18 90:22	74:16 129:22 130:19 160:10 220:5 231:14	32:3 42:23 46:2 56:3 90:19 102:18	integrity 139:15 140:5
161:10, 12 164:11 166:11 167:24	232:10 239:3 255:17	117:4 153:9 155:5 172:14 215:18	intend 160:19
168:11, 17	indicating 69:6	216:16, 22 217:21	intended 169:25
include 29:16 178:10 244:17, 20	indication 32:8 38:19	218:15, 19 219:6 220:1, 11 222:21	intention 45:18 245:8 246:4
included 31:16 50:17 64:5 76:1, 8, 12 95:18 129:10	indicative 241:14, 19	225:15, 19, 23 227:22 228:8, 10 250:3	intentional 159:15, 16, 19
171:24	individual 6:3 21:5 23:13 24:22 25:11, 15 31:9 34:19 43:11	260:9	intentionally 94:7 160:15
includes 91:24 235:12	50:14 53:3 55:12 57:25 61:6 66:7, 8, 15 67:22, 23, 24 75:5	informed 35:23 56:7, 24 57:20 58:8, 20	interact 20:2, 24
including 68:7 94:19, 24 96:24	102:25 118:10 123:18 131:5 150:11	126:16	interacting 21:17 173:14
inclusion 155:17, 21 156:8 158:22 178:22	156:20, 21 158:12 169:3 178:19, 22	in-house 124:3	interest 81:25 86:3, 7 87:24 103:7 106:5
inclusive 140:4	180:24 186:12, 13 187:3 215:4, 10	initial 88:22 89:2 93:15	138:25 142:2 174:25 175:1 180:9
income 72:14, 19	233:11 234:2, 10, 11 235:4 236:18 239:14	initially 27:13 28:3 178:23 181:5 206:16	interested 35:17, 23 41:5 61:2, 3 174:18
inconsistencies 217:4 222:6	240:25 245:11, 19 249:22	Inn 194:4, 11 196:4	180:25 181:3 182:9 183:5 185:8, 11
inconsistency's 121:19	individuals 19:5, 18 20:17 21:8 23:9	innovation 189:17	186:7, 8, 14 188:9 194:15 195:23 206:9, 22 210:19
inconsistent 121:18 195:11 205:21		innovative 103:22 189:17, 18 190:14	interim 185:9
216:24 217:6, 16 220:8 221:15 222:5 230:2			interrupt 52:15 108:13
			interview 58:1
			interviewed 54:22, 24
			introduce 4:8, 14

<p>introduced 130:24 158:18 investigation 134:1, 3 investment 94:16 110:10 111:24 114:1 128:1 investors 221:23 involved 54:21, 23, 25 55:15, 18, 22, 25 93:11 98:25 123:15 126:6, 9, 20, 23 127:3 134:14, 23 145:11 153:18, 19, 20 201:3, 9, 10, 15 204:16, 22 220:19 242:10, 11 251:5, 25 252:3 involvement 112:13 irrelevant 62:18 66:4 95:6 207:20 irresponsible 55:23 issue 52:4 69:4 135:20 171:21, 22 175:5 181:9 186:17, 20, 21 188:13 206:25 207:6, 10 208:7, 16, 17 209:1, 18, 24, 25 issues 112:22 136:12 182:22 201:3, 7 202:5 203:15, 16, 17, 19 206:10, 17 207:11 issuing 174:8 items 14:3 its 24:24 34:21 99:1 167:17 231:5</p> <p>< J > Jackson 1:21 263:5, 18 Jamie 68:16, 18 69:1, 20 70:2, 5 172:7 Jamie's 68:20 January 12:18 154:12 Jim 108:23 109:13 jms@sspfirm.com 2:8 job 18:4 19:2, 11 26:19 31:11 36:8 49:18 54:6 61:6, 11 69:10 70:20 71:1, 2 73:11, 12, 13, 20, 22,</p>	<p>24 74:3, 5, 23 76:24 82:4, 5, 6, 16, 17, 21, 22 83:3, 5, 23 85:7, 8 86:4, 6, 15, 16, 17, 22 88:11, 13, 14 103:5 112:11, 21 113:8, 9, 11 114:10 115:17, 20 121:22, 25 122:4, 5, 13, 16 128:14 131:25 132:2 136:2, 7, 10 138:1, 5 141:24 143:25 144:2, 6, 12, 16, 20, 25 146:4, 8 147:12 156:24 157:3 161:22 172:9 174:25 180:19, 21 182:24 183:22 186:11 189:9, 10, 12 191:6 193:17, 18 228:25 229:11 232:17 233:5, 18 236:25 237:1, 2, 23 238:1, 25 245:12, 14 246:20 257:9 258:10 jobs 74:12 85:8 87:19 113:12 148:8, 20 233:8 239:1 John 5:2 join 5:2 joined 108:20 Jorge 23:17 24:2 Joshua 2:4 4:12 JP 229:11 Jude 23:19 24:1 judgment 101:20 July 11:14, 21, 24 12:5, 11, 13, 22 37:18, 24 jump 169:22 234:16 June 177:19 justification 209:14 210:10 justify 209:18</p> <p>< K > Kabat 28:4, 6 125:13 126:15 keep 43:23 59:7 74:7 77:7 86:24 105:1 106:22 108:13 148:15 166:3 179:6</p>	<p>181:3 183:24, 25 188:3 212:3, 4 228:2, 6, 25 229:9, 13 keeping 61:8, 9 147:20 198:18 keller{sic 229:8 Kent 137:16, 17 kept 149:15 Kevin 28:4, 6 125:13 126:15 151:19 key 146:20 148:8 152:3 221:21, 22 222:1 224:24 247:19, 20 248:3 kicking 133:19 kind 18:15 24:3 31:9 145:14 187:19 198:17 201:6 235:2 257:25 258:1 kinds 165:9 kings 233:13 kit 155:18 knew 35:2 39:24 40:20 60:15 68:6, 14 69:3, 12, 13, 14, 20 70:8 78:8 81:2 85:3 161:10 240:2 249:25 know 5:6 6:11, 15 16:13 18:17 20:1 21:7 23:16, 17 24:18, 25 25:24 30:25 33:10 35:12 42:22 44:12 46:20 47:22 51:25 55:22 56:16 59:24 62:8 67:10, 14 68:24 69:6 78:18 80:8, 9 82:25 85:13, 14 88:9 91:9 92:3, 9 97:4 99:11 101:3 102:4 108:8 109:1, 23 117:2 121:21 123:8, 19, 21 124:7, 9 125:4, 22 126:4, 24 127:1, 4 130:22 135:15 136:18, 21 141:13 143:17 145:23 146:7, 8 147:1 148:10, 23, 25 149:20 151:9 152:22 153:5 154:20 157:1</p>	<p>159:6, 7, 14, 15 162:1, 21 164:16 168:7 169:12 175:9 177:18 178:9 179:6 190:13 194:20 202:21 203:12 204:25 207:8, 16 208:9, 14, 15 211:2 213:15 215:16, 17 216:7, 13, 14, 17, 25 217:5, 6, 24 218:18, 19 220:9, 10 222:6, 21 223:23 225:15 226:17, 21, 25 227:3, 21 228:3 229:25 232:7 240:13 242:15 247:6 249:18, 19 250:10, 19, 20, 23 251:20 252:5 253:25 254:3 256:20 257:6, 20 258:5 knowing 227:2 knowledge 99:12 103:21, 24 146:20 147:5, 24 153:17 190:3, 16 214:13 known 54:16, 17, 19 55:2, 4, 5, 14 166:17 169:11 knows 8:12 60:11 168:3 190:5, 6 KPIs 25:15</p> <p>< L > lack 193:1 236:24 lacked 184:7 Lacks 175:6 lady 156:21 Lamb 227:15, 22, 23 229:6, 10 243:7 252:19, 20 Lamb's 229:3 large 150:9 151:21 175:11 198:6 199:10 232:22 larger 137:10 138:11 largest 32:21 34:4, 13 43:8 45:17 137:14, 16, 18 198:11, 12</p>
---	---	---	---

Lars 67:11 70:2 127:19 128:20, 24 129:2 130:16 131:8, 10 132:22 151:21 198:3 200:24 201:12 202:12 203:4 Lars's 201:13 late 28:7 32:17 35:6, 7, 12, 13 Lavender 151:19 law 95:6, 13 96:9 lawful 5:13 lawsuit 68:23 94:13 96:3 lawyer 29:24 92:1, 8, 19 97:7 lawyers 8:19 lay 200:11 lead 14:3, 6 20:19 35:4 110:12 146:3 170:1, 9, 17 246:12 leader 43:23 51:4 60:18 82:3 112:22 113:2 119:25 139:3 142:3, 4 143:6 144:10 147:12 150:18 201:5 217:17 222:18 224:21 227:25 239:2 242:9 leaders 110:4 116:23, 25 117:10 122:5 124:10 143:13 144:5, 16 145:18 146:1 152:3 172:9 191:11 leadership 18:22 74:4 101:21 112:12 113:1, 19 117:5 136:6 140:25 141:6 142:8 144:21, 22 146:14 147:17 148:16 172:10 190:25 235:12 241:14 244:18, 20 251:22 leading 35:17 112:21 118:11 135:19 144:2, 25 146:4, 5 163:19 191:6 201:15 204:21	233:11 leads 237:17 League 169:13 leaning 107:17 learn 199:18 learned 21:14 31:4 learning 165:2 learnings 146:21 leash 140:23 leave 194:6, 25 leaving 98:24 led 19:1 124:7 229:19 left 6:4, 9 68:21 88:2 196:21 left-hand 36:22, 25 legal 30:2 62:3, 13 84:4 92:7, 9, 14, 18 93:1, 2, 5, 8 153:16 legally 62:23 length 106:19 lengthy 100:9, 25 Leonard 68:16, 18 69:1, 20 70:2, 5 lessons 31:4 level 72:11, 14 78:12 116:5 122:24 124:15 143:20 144:11 159:18 217:2 225:21 234:15, 19, 23 235:8, 23 237:21, 25 238:16, 17 239:11, 20 241:21 261:8 levels 64:11 122:6 232:20 233:23 234:17 238:11 leverage 232:24 Lewis 49:9 lights 61:8 147:20 181:3 183:25 188:3 212:3 likes 256:20 257:21 258:6 line 13:19 108:13 109:6 113:9 116:17 117:1, 9 128:11 134:21 138:3, 4, 11 148:11 150:15 151:7 198:13, 19 227:12 243:6 252:19	lines 25:17 77:13 144:16 147:10, 11 159:7 198:14 lining 211:24 216:12 224:2 liquidity 26:2 list 26:1 67:13, 16 95:19 96:24 105:4 152:17 181:22 182:10 187:24 188:11, 20, 21 189:6, 7 195:24 196:11 206:22 210:21 211:18 212:9, 10 221:17 222:11 223:3 228:2 229:14, 24 240:22 241:8 listed 147:24 177:4 191:20 217:18 227:15, 19 229:20, 21 237:15 239:6 241:9, 10 242:2 247:19 252:18, 19, 21 Listen 103:18 121:16 listening 163:16 lists 216:19 218:11 219:17 222:17 223:7 224:25 227:12 243:5 litany 98:2 226:24 literally 220:20 litigation 7:23 8:5, 8, 17 9:3, 8, 14 85:17, 18 87:5 89:25 98:13, 21 little 110:2 121:13, 18 135:17 169:12 179:21 200:2 live 7:10 lived 7:8 lives 139:20 LLP 2:11 loan 145:14 location 146:9 logical 142:23 149:22 long 4:23 7:8, 12 12:20 65:23 70:11 97:23 109:2 113:2 138:22 146:5 153:3, 22, 23 154:3 187:12 197:10	longer 45:21, 24 98:25 141:9 153:8 182:7 243:7 longevity 66:6 Longstanding 152:19 long-term 32:12 184:21 248:21 look 11:15 42:6, 24 55:8 113:25 116:1 117:24 118:21 125:5, 6 131:14 135:10 171:7 172:3, 9, 10, 17 173:6 174:12 184:22 214:21, 23 215:5 216:25 221:8 223:24 225:20 228:19 239:9 241:6, 11, 12 242:8 243:21 255:14, 18 looked 42:2 looking 118:2 121:3, 9 135:6 141:19 152:17 189:15 192:9 204:9 205:23 214:12 220:20 254:1 looks 29:14 111:2 113:19 117:2 121:4 123:6 125:7 177:13 212:10 231:4 254:21 loss 13:18 lot 13:9 18:5 23:23 26:11 54:5, 25 109:22 117:2, 5, 16 118:19 134:21 165:11 172:8 179:16 180:1, 21 198:7 199:25 200:8 202:21, 22 208:11 219:5 225:24 227:25 240:5 248:19 252:4 257:13 lot's 180:21 Louisville 80:23 108:21 109:7, 10, 21, 25 love 98:16 lower 235:23 luck 9:11 ludicrous 102:12 lunch 108:10
---	---	---	---

<p>< M > M&A 236:21 M&T 187:23 main 150:24 maintaining 74:9 major 150:17 majority 26:23 91:4 154:4 178:13, 25 making 13:25 15:15 16:15, 17 19:9 20:7 25:2 31:2 47:20 62:5 63:2 72:21 79:1, 22 86:6 90:4 97:16 99:14 105:10 118:2, 11 148:13, 16, 17 151:7, 9 163:16 179:7 204:25 207:14 209:19 242:3, 6 243:25 Mallesch 153:1, 3, 10 154:16, 17 155:2 manage 151:1 managed 199:16 257:8 management 19:16, 18, 22 20:17 24:25 49:3, 20 50:8, 12 100:10 111:2 115:3, 4, 7 120:11, 15 125:8 127:12 128:4, 10 130:12, 15 132:10 133:7 134:9, 11 140:12 141:3 152:2, 7 154:15 156:25 157:23 158:15, 16 178:14 180:17 185:1 186:24 198:15 199:11 200:3, 4, 7, 11, 20 204:7 206:23 212:5, 6 213:4, 10 214:9 215:12 223:17 224:20 227:24 228:12 230:15 238:6 239:10, 12 242:24 244:11 249:21, 25 252:14 253:18, 21 254:25 259:7, 20 260:1 management/update 231:6</p>	<p>manager 111:12 116:12, 13, 16, 17 117:19 118:22, 24 119:4, 7, 10, 18, 21 120:3, 16 127:14, 18 130:16 131:3, 7 140:17, 20 managers 122:7, 23 200:20 manager's 118:18 managing 131:4 143:25 144:6 mandated 54:11 manner 139:19 148:2 152:8 March 10:16 111:15 197:20 marginalized 160:13 173:11 mark 80:11 MARKED 3:6 10:11, 14 29:9, 12 36:16, 19 88:17, 20 110:15, 18, 20 113:13, 16 114:22, 25 120:5, 7 122:25 123:3 124:18, 21 127:6, 9 130:5, 8 132:4, 6 140:6, 9 152:9, 12 155:11, 14 177:8 201:17 203:25 204:3 212:16, 17 223:10, 13 229:15 230:24 242:17 244:4 252:7 253:9, 12 254:17 258:24 259:3 260:11, 12 market 34:22 36:10 38:15, 21 39:24 40:7, 12 41:19 43:16, 22 44:1, 4 149:17 151:3, 22 199:9, 15, 19 200:1 201:6 202:23, 25 225:1, 3, 7 232:13, 19, 22 233:20 244:17, 20 250:12 marketplace 40:4 41:18 43:24 47:9 markets 13:19 137:21 148:1, 11</p>	<p>149:4, 14 199:8 marking 212:18 marks 55:10 257:8 258:9 married 7:12 Marsha 50:11 253:16, 19 254:3, 9 master's 9:19 materialize 247:13, 14 materials 14:1 15:16, 22, 24 18:8, 24 160:4 matrix 123:10 matter 18:1 80:15 99:8 210:22 239:13 240:13 248:18 253:17 264:8 matters 15:17 101:16 125:20, 23 144:2 182:21, 23 MB 137:13 149:25 150:1, 2, 23 190:20, 23 197:8 198:2 202:8, 18 McCallister 253:16 254:3, 10 MCHUGH 1:6 2:14 4:6, 11 5:2 8:5, 8 9:2, 8, 14 28:23 29:17 30:13 31:16 32:25 33:4, 14 34:2 35:14 36:4, 22 39:5, 11 40:16 42:1, 13 43:13 44:10, 25 45:11 46:14, 15, 16, 22 47:16 48:3 55:5, 6, 7, 18 56:10, 14, 18 60:6, 17, 21, 22 61:1, 11 62:7 63:7, 18 67:18 68:7 69:20, 24 70:8 72:4 73:4 82:19, 21 83:1 86:12 88:7, 25 89:13, 24 90:5, 16 91:16 92:4, 16, 24 94:3 95:18, 25 96:3, 23 97:1 98:13, 21 99:14 108:19 109:14 110:23 111:12, 21 113:16, 17, 20, 22 115:1, 3, 5, 9 120:8, 9, 11 123:3, 4</p>	<p>124:21, 22 125:18 127:9, 10, 13 130:8, 9, 12, 23 131:17 132:7, 8, 10, 12, 18, 21 133:11, 13, 17 135:8 136:5 138:19 140:9, 10, 13 155:15 157:2 160:2 161:14, 17, 18, 19 163:15, 22, 23 164:3, 13, 14, 17 171:8, 20, 24 172:22 177:11, 14 181:11 182:13, 20 183:11, 12, 17 184:6, 12 185:14, 22 186:3, 18 191:3, 20 194:4, 7, 11 195:14, 18 198:3 201:20 204:3, 4 206:8 209:15 210:2 212:24 213:7, 8, 17 214:7, 10, 11, 15, 17, 25 215:21 216:19 217:9, 11, 12, 18 218:2, 21 219:9, 10, 12, 17, 24 220:5, 8, 14, 16 221:10, 12, 18 222:2, 3, 4, 8, 24 223:3, 8, 13, 14 224:6, 11, 14, 17 226:3 227:6, 18 229:19 230:8, 9 232:11, 12 234:5 239:11, 13 240:15 242:20, 21 243:1 244:7, 8, 13, 23 246:10, 22 249:10, 24 250:17 252:10, 11, 16 253:13 259:4 260:21 264:3 McHugh's 30:17 80:2 85:23 94:20 98:5 111:17 113:24 114:3 115:14 120:12, 25 127:14, 24 130:13 131:17 134:7 140:21 180:6 181:16, 18 188:5 214:18 216:2, 6 225:16 mean 8:18 26:10 31:23 35:13 49:1 54:17 59:15 62:6</p>
--	--	---	--

<p>81:18 84:23 85:19 99:6 106:21 121:16 125:2 146:24 148:5 149:5 150:6 152:4 158:4 162:23 163:5 169:1 172:2, 4, 8 201:7 202:21 225:2 228:5 233:4 235:15 244:18 252:2 257:24 means 50:3 51:20, 22, 25 90:9 138:13 233:17, 19 238:21 245:14 246:3 meant 35:7 51:19 75:4 85:11, 18 189:9 244:19 247:16 measure 116:5 measured 25:14 mechanisms 25:8 meet 108:19 257:5 meeting 12:3 14:9 15:13, 14 16:23 17:9, 22 18:7, 9 20:22 23:21 40:25 41:3 45:3, 7 71:13, 16, 19 77:20 106:10 132:2 188:16 204:14 231:21 255:2, 13, 25 256:19, 20 257:20 258:5 259:23 260:4, 10, 18 meetings 14:7 21:2, 5 22:18, 21 179:6 255:21 261:4 meets 71:17 meld 199:22 Melissa 178:19 member 13:22 14:12, 16, 19 20:20 23:5 53:14, 16 72:2 147:7 152:19 153:2, 3 160:12 173:10 178:12 185:20 187:22 234:19 244:3 members 14:20 20:24 21:1, 11 22:18, 21, 22, 25 23:2 24:5 54:6 164:2, 12, 19 178:10, 14, 17 179:2 190:22 237:12 240:5</p>	<p>243:24 253:7, 24 255:22, 25 257:11 memo 255:11 mention 38:23 39:15 142:7 162:18 258:17 mentioned 20:10 26:7 34:23 109:12 118:4 143:4 151:24 157:25 191:18 192:21 195:17 198:22 merely 14:16 merits 64:10 message 9:10 37:6, 17 41:23 45:9 46:10, 17 78:11 201:23, 25 205:1 256:21 257:15, 22 258:6, 10, 12, 13 messages 9:7 21:25 185:25 257:9 258:1 messaging 9:15 125:20 126:2 205:2 Met 7:16 71:14 108:25 148:9 202:10 255:15 method 22:1 methodology 25:13, 14 116:5 meting 256:8 metrics 25:10, 18 Michael 2:8 5:7 34:19 43:11, 13, 20 44:8, 9, 12, 24 45:4, 6, 11 46:5, 22 52:4 59:17 65:6 249:22 250:4 Michael@blankrome.c om 2:14 Michael's 43:17 250:3 Michigan 9:22 microaggression 156:7 158:2, 21, 24 159:4, 21 160:3, 7, 21 166:20, 24 167:3 169:23, 25 170:9 173:18 microaggressions 161:7 170:16 172:25 mid 6:1 253:24</p>	<p>middle 151:21 199:8, 9, 15, 19 200:1 202:23, 25 225:1, 3, 7 232:13, 18, 22 233:20 244:17, 20 midterm 177:21 178:16 181:12 186:5 midyear 136:17 177:13, 16, 22, 23 178:4 179:2, 15 180:6 181:16, 18 182:13, 20 183:10, 16 184:5, 11 185:22 186:2 188:7 195:18 211:13 217:10 mid-year 135:16 Mike 43:11, 13, 17, 19, 23 44:4, 8, 9, 12, 16, 24 45:4, 6 46:5, 22 47:5, 6 239:25 249:22 250:2, 4 253:16, 19 254:3, 10 military 37:24 million 72:14, 20 73:5 75:19 mind 24:2 65:6 79:21 107:19, 20 165:5 182:15 mindset 103:22 189:17 mine 91:13 minimum 163:4, 21 minuted 261:7 minutes 108:11 195:4 260:18, 23, 25 261:18, 25 Mischaracterization 170:18 Mischaracterized 107:7 Mischaracterizes 39:9 80:5 160:22 206:12 mischaracterizing 89:19 misinformation 32:1 misrepresented 90:18 misrepresenting 214:22</p>	<p>mistake 217:14 mistakes 89:15 mitigating 25:3 model 150:3 moderate 216:25 217:3, 16 221:15 233:6, 24 234:3, 22 237:9, 15, 17, 20 238:2, 3, 15, 20 modifications 150:4 200:14 modified 226:14 module 156:14 modules 156:15 money 74:23, 24 75:2 77:3 80:14, 15 81:1 94:8 145:16, 17 monitoring 4:19, 20 25:8, 18 months 48:8, 14 197:13 211:3 Morgan 229:11 mortgage 145:14 move 42:24 81:11 184:1 245:11 moved 42:7 80:22, 24 135:16 moves 103:5 235:5, 25 moving 61:9 147:19 173:13 179:7 198:7, 18 206:19 212:4 245:8 MRAs 144:9 MRIs 144:9 multiple 66:22 67:4, 8 69:23 81:20 116:7 145:25 146:1, 8, 12 161:23 163:19 190:9 208:22 218:25 235:5 253:4 < N > name 5:19, 20 128:8, 11 157:7, 8, 9 189:7 191:17 228:13 229:3, 6, 24 named 27:24 72:12 names 189:6</p>
--	---	--	---

name's 111:9	233:10 237:6 246:2	nine 25:24 238:13	243:2 244:7, 21
naming 128:11	247:15	NMA 102:17	246:21 252:10
National 10:8 88:21	negative 108:1	No._____Change	253:12 254:20 259:3
natural 150:10	159:22	265:2, 5, 8, 11, 14, 17,	260:15, 16, 20
nature 14:24 23:24	neither 239:20	20 266:2, 5, 8, 11, 14,	numbers 32:14 37:3
24:11 56:23 58:16	network 189:25	17, 20	79:14, 20, 23
60:19 77:25 116:11	190:16, 19 191:4	No._____Line 265:2,	Numerous 101:25
143:9 151:12 155:23	236:15	5, 8, 11, 14, 17, 20	139:23 143:7 162:7
161:11 167:17	never 40:22 48:5	266:2, 5, 8, 11, 14, 17,	
180:12, 19 205:13	56:19, 22 58:15	20	< O >
212:8 230:6, 20	59:23 60:9, 11, 12, 14,	nodding 6:22	oath 264:15
256:22, 24 257:25	18, 19, 24 63:22 64:8,	non-board 72:2	object 66:25
near 136:17	9 65:13, 15, 18, 19	non-independent	objection 8:18 29:23
necessarily 20:15	68:8 70:23 71:9	13:3, 10	33:17 39:8 47:1, 24
23:25 27:12 34:24	73:14 80:12 86:12	Nope 259:16	50:4 51:15 52:12, 17
59:3 76:18 105:10	90:23 91:6 94:11, 12	norm 81:14	54:1 57:6, 18 59:6,
120:4 166:19 169:19	97:10, 11, 20, 21, 24	normal 21:16 81:15	21 62:3, 13 63:8
202:19 205:12 219:7	98:2 101:17, 18	182:15 209:22, 23	64:16 65:1, 25 70:10,
225:13 228:24	102:9 103:12 125:2	normally 144:22	14 76:2 78:16 79:1
240:14 251:15	126:1, 5, 9, 18 127:5	North 250:11, 13, 14	80:5 87:6 89:15
necessary 25:4 42:3	139:2 162:4, 5, 8, 19,	Notary 1:21 263:6,	90:6 91:17 92:5, 17
50:21 51:13, 17, 20,	20 164:7, 10 165:1, 2	19	93:1 94:23 95:3, 21
21 52:9 53:9, 10	166:17 168:6 169:11	note 24:10 142:9	96:1 97:3, 6 98:14
104:2 146:12 181:1	171:12, 13, 19, 20	186:5	100:18, 23 103:15
184:7 191:9 192:14	172:9, 13, 24 174:16,	notes 24:9 40:25	104:24 105:17, 22
193:13, 18 202:13	17, 23 175:2, 3	45:3, 6 47:12, 18, 20,	106:19 107:7 112:3
216:16 232:4	177:25 180:18	21, 22 77:20 108:11	114:5 125:25 126:1
need 6:21 33:6	184:20, 22, 23 185:2,	135:11, 13 136:5	129:17, 25 131:20
45:22 75:13, 21 77:3	5, 6, 7, 11 186:5	185:21, 24 263:11	138:20 139:13
79:16, 18 80:20	190:20 191:14, 16	notwithstanding	154:10 158:3 160:22
83:16 88:15 149:6	192:24, 25 193:9, 11,	81:25	164:15 165:7, 20, 25
162:17 167:10, 14	12, 13, 14, 19, 20, 21	November 12:8	167:4 168:2, 18
168:15 182:3, 5, 7	195:16 210:15 211:4	221:4, 12 222:25	170:2, 11, 18 171:1
183:7 184:2 185:9	213:14, 23 214:2, 11	225:16 229:18, 19	175:6, 16 176:5
187:1 192:5 202:6, 7	217:5, 11, 13, 23, 25	246:22	191:22 195:3 206:12
210:24 211:6, 8	218:7, 9, 17, 24, 25	number 4:7 10:14	213:22 214:19 218:6
212:13 233:17	219:16 220:7, 10	29:12 30:10 36:19,	226:18 240:18
236:22	221:8, 13 222:10	21 37:7, 10, 12, 15	objections 55:7
needed 14:5 18:19	226:2 236:19, 20, 25	61:21 74:20 88:20	objective 18:6 235:9
36:1 39:13, 25 40:13	237:1 239:22 241:14	106:20 110:18, 20, 22,	241:8 242:2
76:24 83:13 183:1	256:22, 23, 25 257:15	25 114:25 120:8	objectives 147:21
184:15 185:18 187:6	258:12, 15, 17, 22	123:3 124:21 127:9	observation 179:11
189:5 194:17 196:12	new 39:19 73:22	130:8 132:7 140:9	observations 179:17
199:21, 22 200:25	81:12 149:8 156:22	141:16 152:12, 17	259:18
201:7, 13 207:19, 21	173:19 228:23	155:14 175:14	observed 179:12
232:17 233:20	news 82:24	176:24 177:11	240:12
needs 19:10 26:18	nice 133:9 136:7, 10	201:20 204:3 213:6,	observing 195:15
27:5 86:14 97:22	144:1, 12 145:24	12, 13, 15, 18 218:1, 4	obstruction 96:16
103:6 192:2 202:12	146:4 191:5	223:13 224:10 230:8	obtain 9:20
		231:2, 14 242:20	

obviously 13:9 15:15
22:5 30:24 39:16
40:4 53:9 60:1
70:17 72:3 99:6
123:11 126:23
135:20 136:24
138:13, 14 214:12
occur 43:12 70:4
91:5 94:11, 17
occurred 28:1 42:19,
20 61:1 67:21 79:12
97:11 141:12 163:17
186:15 187:6 229:18,
25
occurring 42:17
94:11
occurs 20:16 187:19
October 11:6 84:6,
14 123:7 137:6
201:25 214:1 215:22
220:18 263:14
odd 161:24
Odyne 54:23
offer 35:14 80:3
152:22 229:11
264:14
offered 32:20, 25
34:9 40:2 71:2 75:3,
9 80:16 113:11
138:6
offering 137:6
offhand 37:12 178:9
office 4:21 35:16
41:4 69:12 83:2, 4,
14, 17, 22 149:9
150:25 151:1 161:19
163:8, 11, 24 171:9
177:14 195:20
198:15 258:19
263:13
officer 10:23, 25
23:1 24:13, 15, 19, 20
26:3 28:10, 14, 17, 19
32:18 43:5 72:13
84:4 127:20, 21
131:1, 13, 15 133:2
149:13 153:16
156:23 157:19
183:13, 18, 20 203:5
officers 76:22 145:14

official 77:22, 24
263:13
off-site 188:16
Off-the-record 262:9
oftentimes 14:19
23:18 24:18 27:18
81:19 101:22 149:12
oh 38:23 80:19
OHIO 1:2, 20, 21
2:6, 13 4:5 7:7
92:19 96:9 263:1, 7,
13, 19
okay 8:22 11:10, 22
12:11 32:24 37:1, 4,
9, 17 38:10, 23 42:14,
20 43:3 48:14 51:23
73:15, 17, 23 74:9
82:12 85:16, 20 89:4,
9 90:4 93:23 106:14
107:12 108:17 110:9
111:6, 11 121:15
122:21 126:12 135:5,
9 158:19 160:15
162:25 163:5 176:23
189:7 195:8 202:2
212:12 214:16
215:15 216:1 224:12
226:4 234:2 244:15,
22 245:2 246:23, 24
249:18 250:21
255:17 262:6
old 62:24 81:21
111:2 137:16, 17
169:14, 15 172:5
173:20 215:19
older 169:17 171:25
onboarding 199:15
once 15:13, 17, 25
20:23 23:2, 7 26:9
27:4 31:11 44:4
54:18 60:14 68:2, 10
70:18 71:6 76:19, 23
78:11 79:4 83:14
90:20 114:9 117:14,
25 118:9, 25 123:12
131:24 133:9 135:18
151:22 162:19
163:20 174:6 178:2
179:25 184:22 186:9
187:25 201:14 218:9

232:23 233:7 238:23
243:14, 21 246:1, 12
247:11 248:12 252:1
256:4
one-off 200:8
one-on-one 21:5
22:17, 20 257:5
ones 76:19 178:15
one's 214:19 233:12
online 156:9
open 150:20
operate 236:18
operates 139:18
operating 10:25
127:19, 21 131:12, 15
133:2 149:13
operation 10:24
13:18 122:8 198:2, 5
operational 16:6
operations 10:10
147:6, 10
opine 90:8 92:20
243:16
opinion 53:2 65:9,
10 100:10, 16, 21
101:1, 5 102:8 167:7
170:2 203:4, 5, 6
234:6
opportunities 102:17
117:8, 9, 25 118:25
119:6, 23, 25 120:3
122:1 147:23 150:4
198:11 224:3 238:24
245:13 247:17, 24
248:17, 19 257:4
opportunity 30:21
35:2, 4 36:5 41:8
43:16 49:6 116:25
118:3 119:15 137:4
143:14, 16, 19 149:8,
18 181:3 225:14
232:16 233:3 236:20
246:1, 8, 13, 14, 18
247:22 248:1, 6, 7, 15
opposed 30:2 239:4,
6 243:7, 10
opposite 170:11
173:13 257:7
ops 31:7

optimal 132:24
option 102:22
options 19:11 183:1
orchestrated 17:13
order 4:25 59:8
94:7 183:19
organization 19:5
25:1, 23 26:10, 16, 18,
19 31:6 48:22 50:15
58:22 64:12 84:12
86:6 87:21 94:15
107:15 113:10 114:2
116:6 117:4, 8, 13, 15,
16, 20 118:8, 9, 10, 13
119:2, 11 122:6
123:13, 23 124:2
127:17 132:24 139:2
142:4 143:5, 17
144:10, 11 147:4, 16,
22 148:9, 18 150:17
157:2 161:17 179:4,
19 180:23 182:16
184:1 191:7, 8
204:20 217:15
225:21, 23 229:9
230:22 232:24, 25
233:2, 10, 11 234:15,
17, 18, 24 235:8, 16,
23 236:1 237:22, 25
238:11 239:13 240:7
241:1, 16 245:13
246:9 247:16 248:8,
14 251:23 257:8
organizational 27:5,
22 119:3, 5
organizations 149:11
203:7
organization's 117:20
182:25
outcome 118:8
169:19 185:2 211:10
247:15
outcomes 60:3
117:17 139:1 144:3
145:1
outside 8:2, 19, 20
9:3 56:2 97:11
124:3 153:21 209:8
239:18, 19 240:10
249:13

outstanding 136:12
144:20
overall 24:24 112:20
121:6, 11, 16 129:23
133:12 134:16
239:10
Oversee 10:10 13:17
overseeing 30:22
115:17 131:4 198:1,
16 202:8
Oversees 28:11
oversight 13:12, 14
17:14 25:5, 12, 16
31:2, 9 44:3 49:9
134:19 143:4, 21
148:7, 14, 24 149:1,
20 150:8, 11, 16
151:11 152:6 198:5,
8
< P >
P&L 13:18
p.m 37:19, 24
114:17, 20 155:7, 9
177:15 206:2, 4
248:25
package 31:20
PAGE 3:3 29:20
30:9 43:2 61:22
66:22 93:14 112:7
115:21 121:3, 4
124:14 125:17
129:22 131:16
133:16, 18 136:5
141:16 155:24 160:2
173:4 175:20, 25
177:4 212:5 214:4
219:7, 14, 15 221:11
223:6 261:11, 18
265:2, 5, 8, 11, 14, 17,
20 266:2, 5, 8, 11, 14,
17, 20
pages 121:8 263:8
paid 72:21 75:25
76:7, 12, 14, 15, 18, 21
86:4 142:5
paper 79:6 173:21
paragraph 11:19
30:9 31:19 32:17
35:6 43:2, 4 45:14

48:7 49:25 50:4
54:14 61:21, 23
66:21 71:12 72:8, 17
75:17 78:14, 22
82:23 84:19 85:16,
20 88:1 93:14, 16
133:17 135:10 136:5
138:18 139:11
141:20 142:7 143:24
144:19
paragraphs 72:25
parallels 119:12
parameters 238:3
paramount 192:14
part 15:1 19:14
20:15 34:20 35:5
44:7 49:3 50:7, 16,
21 51:10, 13 52:24
54:20, 24 55:6 57:24
67:6 69:15 71:10
73:6 88:9 98:10
128:23 131:8 148:19,
20, 25 156:13 157:2,
5 174:4, 6, 9, 14
175:12 183:7 187:11
190:22 200:4, 6, 19
207:22 209:22 210:1,
2, 16 211:8 215:9
238:8 241:2 246:11
participate 57:13
participated 130:20,
23
participating 4:16
particular 51:17
54:22 103:19 156:21
173:14 180:5 205:15
parties 116:7
partners 139:7, 16
partnership 18:25
113:5
parts 198:7
party 51:3, 12 57:22
116:6 146:10
Pas@sspfirm.com 2:7
pass 231:25
paste 225:24
path 110:11
Patterson 2:5
pay 93:19
peer 56:3, 6

peers 54:22 55:3, 9,
22 58:7 67:7, 15
68:6, 10 139:19
190:4, 19
PENALTY 264:5, 6
pending 4:4
people 19:24 30:20
31:11 55:15 87:1, 11
98:22, 23 117:4
139:4 143:11 145:11,
13 148:19 157:1
171:17 174:17
175:24 188:19 198:7
203:4 225:22 229:11
233:1 242:7 251:14,
15, 20
percent 73:9, 10
77:16 129:9 135:21
137:10 138:5
perform 235:14
performance 16:6
19:7 26:2 31:3
32:11 111:2, 18
112:1, 2 115:3, 4, 15,
16 118:19 120:11, 25
121:1, 20, 23 122:23
127:12 128:3, 19
130:11 132:10, 24
133:22 139:24
140:12, 15 143:9
199:21
performed 25:15
32:12 132:11
performer 122:9
performers 122:9
144:24 145:8, 17, 19
performing 25:10, 13
114:7 132:2 143:11
178:4 229:12
period 14:12 17:23
19:2 27:6, 18 40:6
48:17 137:12 154:4
168:5 174:19 177:19
256:12
PERJURY 264:5, 6
perks 74:7 87:18
permanent 18:18
60:17 184:4 189:11,
13
permitted 59:9

Perry's 194:4, 11
196:4, 20, 24
person 23:12 51:1
55:11 104:14 132:11
150:25 157:18
173:12 193:9, 25
211:23 212:2 228:6
229:8 232:22 235:7
250:4 251:9
personal 106:4
125:19 180:12
182:22 183:3 186:16,
20, 21 187:2 206:10,
15, 25 207:5, 6, 9, 10
208:7 209:1, 10, 24
personally 158:5, 7
personal-related
208:17
perspective 42:11
134:14 147:8, 15
174:21 191:15
Peter 2:1 3:4 4:11,
14
petulance 84:20, 24
85:12
phase 118:11
Phenise 2:17 5:10
Phil 8:5, 8 9:2, 8, 14
28:23 30:17 31:16
32:25 33:4, 14 34:2,
9, 23 35:14 36:3, 9
38:3, 20 39:11 40:16
42:3, 13 43:13, 15
44:10, 17, 25 45:2, 11
46:4, 5, 6, 7, 9, 14, 15,
16, 20, 22 47:4 48:3
55:5, 6, 7, 18 56:9, 14,
18 57:11 60:5, 16, 21,
22 61:1, 11 62:6
63:7, 18, 21 67:18, 24
68:7, 21, 22 69:10, 20
70:8, 19 72:4 73:4,
18, 22 74:4, 19 77:10
78:8 79:19 80:2, 10,
13 82:3, 19, 21 85:21,
23 86:12 88:7, 10, 11,
25 89:13, 24 90:5, 16
91:16 92:4, 15, 24
94:3, 20 95:18, 25
96:3 98:5, 13, 21

99:3, 14 105:5
 108:19, 24, 25 109:9,
 14, 18 111:17, 20
 112:11, 20 113:11, 19,
 22, 24 114:3, 9 115:3,
 5, 9 116:21 120:11,
 12, 25 121:21 122:3,
 12 127:12, 24 129:15
 130:12, 13, 23 131:17,
 23 132:10, 12, 18, 21
 133:4, 10, 12 134:7
 136:6, 9 138:6, 22
 139:1, 5, 14, 18
 140:12, 21, 22 141:6,
 24 143:13, 14, 24
 144:20, 24 146:2, 5,
 19, 25 147:8 148:15
 151:10 153:18
 161:14, 17, 18, 19
 162:2, 15 163:10, 15,
 21, 23 164:3, 12, 14,
 17 166:18 169:11
 171:8, 20, 24 172:22
 177:14, 16 180:6, 15
 181:2, 7, 8, 11, 16, 18,
 20 182:13, 20, 22
 183:11, 12, 17, 21
 184:6, 12, 20 185:2, 5,
 14, 22 186:3, 6, 8, 17
 188:5, 9, 13, 15, 16, 17,
 22, 24 189:1, 6, 12, 14
 191:3, 5, 14, 16, 20
 192:1, 6, 11, 18, 19, 22
 193:9, 17, 22 194:4, 5,
 11, 14, 15, 25 195:1,
 14, 15, 18, 23 196:3, 7
 197:3, 6 198:3, 24
 199:2, 3, 4 200:25
 201:2, 4, 9, 14 202:11,
 12, 24 203:9, 14, 17
 206:8, 14 207:1
 209:15 210:2, 18
 214:10, 11, 18 216:2,
 6, 18 217:9, 11, 12, 17
 219:17, 24 220:4, 8,
 14, 16 221:12, 17
 222:1, 3, 4 223:3, 8
 224:6, 14, 16, 19
 225:13, 16 227:18
 229:19 232:12, 16

233:3 234:5 235:17
 236:7, 8, 10, 23 237:9,
 18 239:3, 11, 12
 240:2, 4, 6, 15 246:10,
 20 249:10, 24 250:5,
 16 252:1, 2
PHILIP 1:6 2:14
 4:6, 10 29:17 30:13
 264:3
Phil's 35:16 64:4
 74:23 81:10, 25
 109:4 112:1 115:25
 149:21 166:16 180:8
 191:17 202:17
 229:23 235:5 238:7
 241:14 251:7
Phone 2:7, 13 20:21
 37:7, 10, 11, 12, 15
 58:21
phrase 162:19 241:3
physical 74:10
Physically 22:1
picked 133:8
Place 1:19 14:5
 16:1 18:3 25:4, 7, 8,
 18 31:3 55:25 56:8
 57:21 142:10, 23
 173:16 187:13
 196:18, 20 208:2
 220:25 228:21 233:1
 257:1 261:5
placed 246:5
placeholder 228:15
Plaintiff 1:7, 16 2:1
 4:10, 12 30:12 32:20
 43:7 45:15 66:23, 25
 67:1 71:16 72:11, 12,
 18 82:25 84:20 88:1
 93:13, 20 94:3 95:17,
 20 209:16
plaintiff's 31:20
 93:19
plan 17:12 126:17
 136:9 150:1 185:18
 186:23 213:5, 11
 215:5 219:15 223:1,
 18 224:6 227:9
 230:15 236:14
 242:25 244:12

252:14 253:18, 22, 24
 254:24 259:8
planned 181:5
planning 17:1, 6, 11,
 16, 18, 19 18:3, 10, 15
 19:23 35:24 48:8, 15,
 16, 23 49:4, 7 64:3, 6,
 24 65:12, 21 107:14
 146:9 182:20 183:8
 185:16 186:24
 187:12 197:5 209:23
 223:25 232:3 254:25
 259:20 260:1
plans 48:21 215:10
platform 16:16
 200:9, 12, 17
play 182:6, 8 198:25
 211:6 232:23 250:6
player 139:6
players 190:6
please 5:20 6:19
 7:6 8:6 10:15 17:3
 44:20 46:12 59:19
 69:22 76:4 89:20
 110:19 111:1 113:18
 115:2 116:18 120:10
 123:5 124:23 127:11
 130:10 132:9 139:12
 140:11 155:16
 177:12 204:5 213:2,
 8, 21 218:3, 4 223:15
 230:13 231:3 237:14
 242:22 244:9 252:12
 253:14, 25 254:20
 259:5, 24 260:17, 22
 261:12
pleased 99:16, 24
pleasure 87:11, 12
plugged 134:17
plus 218:12 222:13
 223:5 226:10, 11
 227:22 228:3
PM 113:19
PNC 2:12
point 26:14, 18
 27:16, 19 36:19
 42:12, 14, 25 43:20
 52:12 73:2, 13 81:8,
 23 100:11 101:14
 103:25 107:11

117:14, 19 118:1, 9,
 17, 21 120:13 127:17
 128:16 131:11
 132:15, 20 134:11
 135:1 136:4 140:17
 149:2, 24 150:25
 152:1 154:19 180:4,
 7 183:2 184:8
 186:25 201:5 203:7
 211:11 220:25
 221:17 223:21
 225:11 227:1 238:23
 242:8 246:15 255:10
pointing 144:15
 231:20
points 14:9 16:11
 117:23, 25 174:10
police 156:21, 22
 157:19
policy 88:12
Poole 2:17 5:10
portray 203:17
position 11:6, 10
 13:4 26:7, 12 27:7, 9,
 16, 17 30:19 31:6, 10,
 13 32:6, 20 33:7
 34:17 38:10 39:12,
 17, 25 40:3, 18, 19, 23
 41:7 43:7 45:12, 17,
 21 48:10 49:1, 14
 50:16, 22 51:1 65:24
 66:7 70:22 72:11
 73:7, 17, 21 75:23, 24
 76:6, 9, 11 77:18
 78:14, 22, 25 79:17
 80:16, 24 81:12
 86:22 90:4 98:5
 99:9 100:6 102:1, 3
 104:4 106:13 109:5
 112:16 115:5, 16
 120:12 127:20, 24
 128:6, 7 130:13
 131:10, 24 132:14
 140:21 141:10
 142:10 143:7 148:13
 181:24 182:2 183:20
 193:20 211:1 225:12,
 13 226:9 228:1
 232:13 233:13

237:19 241:18
 246:13
positioned 243:18
positions 13:20
 103:4 122:12 152:3
 216:18 218:11
 221:18 222:12 224:7,
 18, 23, 25 244:16
 245:12
positive 28:1 33:9,
 12 34:8 129:7 144:3
 256:12
positively 145:1
possible 136:3
 150:12 151:10
 245:13
possibly 208:10
potential 19:9 31:7
 48:22 57:22 68:1, 11
 102:16 105:4 106:2,
 11 144:1 204:24
 208:19 211:25 212:6
 216:18, 25 217:3, 16
 218:11 221:15, 18
 222:12 224:18, 22, 25
 225:12, 14 226:8
 228:6, 16, 22 229:8,
 12 232:12, 15 233:5,
 6, 15, 17, 19, 23, 24, 25
 234:3, 10, 16, 22
 235:6, 10, 15, 19, 20,
 24 236:2, 3, 4 237:10,
 15, 17, 20, 21 238:2, 4,
 8, 12, 14, 20 244:16
 245:3, 4, 10, 12, 14, 16
 246:1, 16, 18, 25
 247:12, 18 248:12
potentially 23:6
 64:12 71:24 86:22
 104:5 107:21 146:11
 166:15 172:18
 187:21 215:14 228:1,
 16
potential's 225:11
PowerPoint 231:7
practice 133:20
 135:20 136:1 168:24
 186:4 230:21
practice-related
 134:10, 20

practices 133:20, 23
 134:12, 16, 18 173:17
 174:5
predecessor 27:23
prejudiced 160:12
 173:10
preparation 7:17
 14:1 204:16
prepare 7:14 16:20
 19:21 31:7 179:15
 180:1, 5 181:15
prepared 25:9 57:12
 213:15 226:24
presence 8:19, 20 9:4
Present 2:14 4:8
 8:21, 22, 24, 25 20:18
 46:21, 23 71:19 72:4,
 6 163:10, 13, 15
 205:10 210:18
 223:25 224:19 232:5
 246:17
presentation 72:5, 7
 231:7
presented 15:16
 17:17, 21 18:14
 25:11 155:20 156:3
 182:10 204:7, 9, 12
 215:11 223:22 232:9
 259:13, 15, 17 260:3,
 9
presenting 174:8
 190:12
president 11:1, 3, 9,
 11, 16 13:15, 16, 21
 17:6 18:10 26:22, 25
 27:1, 3, 12, 23 28:4
 30:14 32:18, 21 34:3
 38:7 42:5 43:7, 21
 44:3 45:12, 17 48:10
 49:1, 15, 18 50:3, 22
 51:2, 13 53:23 55:12,
 16, 19 56:21 57:22
 58:13 59:5 60:8, 10,
 23 64:14, 24 65:12,
 21 67:1, 19 68:1, 4, 7,
 11 69:4, 25 70:9, 24
 77:12, 13 81:23
 83:21 84:9 85:3, 4
 86:9 100:4, 7, 15
 101:3, 8 103:4, 11, 13

104:5, 22 105:8
 106:11, 17 107:1, 22
 108:24 109:9, 21
 110:10 113:1 132:16
 142:15, 20, 22, 23, 24
 143:1, 23 144:23
 146:3, 4 148:21
 149:13 161:20
 162:12 183:12, 19
 184:13, 18, 21, 24
 185:3, 7 186:18
 187:8 189:13 194:7
 195:2 206:10 211:15,
 22, 25 212:7 216:19
 221:16, 18 222:3
 226:11 229:20, 22
 234:20 235:1, 16
 236:2 237:19 238:18
 245:22 250:11
 259:21 260:2
president/CEO 60:25
 64:6 66:24 188:25
 189:2 217:1
president/COO 27:24
presidents 30:23, 24
 39:19 142:25 148:10,
 25 149:12, 14 172:5
president's 17:1
 141:1 145:5 146:6
 163:19 235:22
pretty 34:8 131:14
 172:2 187:18 251:22
previewing 146:11
previously 187:7
 206:7 259:12
primarily 20:4
primary 18:6 20:8
prior 16:22 19:6, 15
 27:11 32:11, 13 51:6
 70:23 75:15 81:16
 82:13 84:4, 8, 11
 86:21 106:15, 17
 107:8 109:2 120:14
 121:5 125:8 137:22
 138:7 146:21 187:16,
 17 190:9 220:20
 246:11 255:21, 25
privileged 102:18
proactively 143:25

Probably 6:1 11:1
 26:24 34:6 74:22
 75:8 79:6 123:25
 137:15 151:20 156:2,
 3 179:8 197:13, 14,
 15 199:3 205:5
 230:19 243:13 247:9
 253:1 255:7
problem 170:16
 202:4 240:2, 3
problems 199:7
 201:1 202:18
proceed 36:20
proceeded 79:25
proceedings 263:9
process 17:13, 18, 20
 18:15, 17 20:13, 15
 48:16, 18, 20 49:3, 4,
 7, 10, 17, 20 50:8, 9,
 17 51:9 54:4, 21, 24
 55:6, 7, 15, 19, 23, 24
 56:1, 4, 7 57:21, 24
 60:1, 2, 6 61:10 67:6,
 15, 21, 23 68:3 69:15
 89:18 90:5, 7, 9
 95:10 96:2, 9 97:23
 100:10, 25 101:2
 104:17 107:14, 25
 116:4, 8 126:7, 10, 13,
 14, 17 127:4 131:6
 134:12 135:24
 156:13 177:22 179:7,
 16 180:1 183:8
 187:12, 13 188:1
 197:10 199:17, 23
 204:18 207:21, 23
 209:8, 23 210:1, 3, 17
 211:5, 10 212:14
 216:9 220:19 252:3
processes 60:3
 107:23 120:1, 2
 144:6 199:11, 13, 14,
 22
process-related
 199:15
produced 37:5
productive 202:3
professional 94:10
 243:20

<p>profile 54:25 192:3 193:22 237:7</p> <p>profit 13:18</p> <p>program 150:25 158:13 198:15</p> <p>progress 19:7</p> <p>promise 98:12, 20, 24 99:21</p> <p>promised 56:22 71:5 97:9 105:5</p> <p>promises 98:22, 23</p> <p>promote 82:2 142:22 171:15 240:11</p> <p>promoted 81:8, 16, 20, 22 85:2 91:12 110:9 113:10 142:5 185:14</p> <p>promotes 169:21</p> <p>promoting 102:25 224:4 242:5</p> <p>promotion 80:25 82:1 86:8 122:2, 10 133:10</p> <p>promotions 81:5</p> <p>prompted 193:15</p> <p>proper 129:18</p> <p>proposing 188:24 189:1</p> <p>protected 48:11 61:24 62:1, 7 159:23 175:22, 24 182:25</p> <p>protective 4:25</p> <p>proud 21:8 162:22 163:7 164:21 169:21 171:8, 9</p> <p>provide 13:12 16:12, 25 17:5 18:8, 12 19:17, 19 24:24 32:8 59:23 119:4, 18, 21 146:14 150:20 153:10, 14 156:18 158:1</p> <p>provided 7:19 15:25 16:10 17:2 128:24 140:25 160:3 172:13 174:2 232:1, 4 259:22</p> <p>provides 119:11</p> <p>providing 15:22, 23 19:4 31:1 44:3</p>	<p>144:20 232:20 254:23</p> <p>proviso 96:7</p> <p>proxy 72:11, 13 73:6, 9, 12, 14, 15, 17, 18, 21, 23, 24, 25 74:2 76:1, 8, 13, 16, 17, 25 77:6, 18 78:2, 10, 12 79:17 82:8, 14 86:18 122:11, 12 129:10, 13, 14 155:5 172:19, 20, 21 216:12, 13, 17</p> <p>Public 1:21 107:12 263:6, 19</p> <p>publicly 155:5</p> <p>pulling 225:23</p> <p>punishment 93:20 94:2</p> <p>punitive 89:12 91:16, 21, 24 92:3, 6, 10, 15, 24 94:1 96:22</p> <p>purpose 245:17</p> <p>purposefully 89:19</p> <p>purposes 66:24 67:19 70:1</p> <p>pursuing 182:21, 23</p> <p>pushing 202:22</p> <p>put 5:4 16:16 19:14 25:4, 6, 7, 8, 18 31:24, 25 33:11 39:16 41:15 51:1 52:15 55:5, 9 66:10, 11 72:10 73:11 74:21 75:13, 21 79:15, 18 87:16 94:14 101:2 105:3, 4 111:8, 10 119:25 126:24 127:1, 4 135:12 172:19 180:18 181:21 182:10 186:10 188:11, 20 189:7 195:24 196:10, 14 199:20 203:7 206:22 207:17 208:1 217:5, 24 218:18 222:15, 20 225:18 228:2 229:2 233:1, 4 236:12, 14 248:21 253:1</p> <p>Putrino 250:10, 11</p>	<p>251:4</p> <p>Putrino's 251:5</p> <p>puts 86:13 146:10 219:6</p> <p>putting 18:3, 23 87:20 90:20 126:20 185:4 211:17 224:4 229:5</p> <p>< Q ></p> <p>qualifications 63:21 64:11 65:17 98:1 100:11 101:6 104:1, 9 124:10 191:19 193:7</p> <p>qualified 51:1 60:16 63:22, 23, 25 74:5 98:3 107:18, 20 174:24 183:18, 22 187:23 237:24 263:6</p> <p>quarterback 184:2</p> <p>question 6:20 7:1, 2 8:6, 24 14:11 17:3 21:24 27:8 29:24 39:9 44:15, 21 46:12 51:11, 16, 24 52:1, 6, 19, 21 54:2 56:11 57:7, 19 59:11, 14, 16, 18 63:11, 12 64:21 65:5, 6, 8 66:1 69:22 70:11, 12, 15 76:3, 4 78:19, 20 80:11 89:20 90:11, 13 92:10 93:6, 25 94:24 95:4, 10, 12, 15, 22 96:7, 10, 13, 15, 17, 24 101:20 103:2, 16 104:20, 25 105:1, 18 106:22, 23 108:10 119:19 124:15 129:18 159:1 161:1 164:5 165:23 166:1, 5 167:21 168:1, 3, 19 170:5, 6, 7, 12, 13, 23, 25 171:3 173:7 175:8 176:2, 6, 8, 9, 10, 19 177:1, 7 181:12 191:23 192:17 194:8, 9 205:14 207:4 208:5,</p>	<p>6, 8, 22 210:22 211:18 215:20 217:24 237:13, 14 240:19 242:13, 15, 16 254:5 257:18 259:24 261:14, 15</p> <p>question{sic 104:25</p> <p>questioning 108:14</p> <p>questions 6:18 14:8 52:3 59:7, 9, 12 70:15 166:4 180:22 253:25</p> <p>question's 95:15 167:16 176:14</p> <p>quick 203:22 259:18</p> <p>quickly 35:23 188:8 203:23 207:2</p> <p>quit 68:22 69:10 70:19 83:11 88:15 90:24 153:18</p> <p>quite 20:2 27:21 55:3 117:22 164:20 197:24</p> <p>quitting 88:13</p> <p>quote 61:11</p> <p>< R ></p> <p>race 173:14 175:21</p> <p>racism 175:21</p> <p>raise 74:11, 16 87:18 131:23</p> <p>raised 95:17 146:2</p> <p>ran 108:25 111:23 198:16</p> <p>ranking 48:9 133:12</p> <p>Rashty 239:15</p> <p>rate 242:9</p> <p>rating 114:9 121:4, 6, 9, 11, 15, 16, 17 129:23 221:23</p> <p>ratings 130:25 180:3</p> <p>RBC 9:25</p> <p>reach 122:6</p> <p>reached 23:18 195:19 256:3</p> <p>reaching 23:4 56:2</p> <p>reacting 56:18</p> <p>reaction 241:21</p> <p>reactions 86:21</p>
--	--	--	---

<p>read 11:2 38:13 59:20 63:11, 13 70:12, 13 85:20 87:7 89:4, 5, 7, 20, 22 111:23 112:4, 8 121:21 129:19 131:21 138:18 139:11, 25 156:2 164:8, 10 166:5, 7 173:6 175:17 214:3 234:1 242:1 261:19, 21 262:3 264:7, 9 readiness 101:5 212:12 reading 89:6 140:22 reads 43:4 54:15 61:23 66:22 71:13 93:17 149:2, 24 152:1 ready 101:3, 8 176:23 183:13 195:14 210:17 211:22 216:19 221:19 225:1, 4 232:13 233:18, 19 245:5 246:2 247:1 reaffirming 54:25 realistic 253:2 realize 149:25 really 14:22 17:24, 25 21:13 33:10 56:15 66:18 101:16 109:22 112:5 123:12 124:14 178:1 196:22 198:23 200:15 201:12 210:25 238:15 241:17 re-ask 259:24 reason 65:14 116:24 162:5 170:15 185:6 191:1 192:25 215:5 220:22 253:4 259:13, 16 265:4, 7, 10, 13, 16, 19, 22 266:4, 7, 10, 13, 16, 19, 22 reasonable 93:18 177:20 reasons 98:2 183:3 recall 6:10 8:10, 15 9:16 20:3 22:4, 6</p>	<p>37:11 42:17, 19 44:11 56:13, 15, 18 57:4, 11, 14, 17 67:8 69:18, 19 72:1 80:11 81:21 83:9 84:14 109:22 111:9 124:4, 13, 17 125:1, 2, 3, 9 127:16 128:7, 12, 19, 22 136:21 151:25 153:23 154:2, 5 155:4, 22 156:4 157:8, 9 163:17 174:13 177:16 178:17 182:14, 17 196:22 202:16, 19 204:15 219:5, 7 220:23 224:16, 22 229:2, 4, 5 231:23, 24 239:8, 11, 19 254:7, 12, 13, 15 256:3, 4, 6, 7, 16, 18 257:23, 25 258:7, 18 260:8 recalls 80:10 receive 24:7 74:16 81:12 156:6 received 19:6 22:4 161:3, 4 170:14 228:11 receiving 14:6 74:17 117:4 recess 61:16 114:19 155:8 206:3 248:24 recognition 145:12 recognize 37:7, 9 65:20 82:7 124:12, 13 135:11 145:16, 18, 25 164:11 166:10, 23 171:24 215:1 217:8 recognized 51:4 145:22 171:25 recognizes 144:24 145:7 recollection 22:7 41:6 47:20 136:15 141:5 recommend 60:23 100:3 103:8 106:1 181:22 183:11 189:7 recommendation 54:8 98:10 101:23</p>	<p>102:14, 24 103:1, 13 104:21 105:11, 20, 23 106:9, 12, 16, 18 107:2, 5 196:11 recommended 102:1 103:20 106:2 158:14 250:1 recommending 60:24 recommends 106:6 reconsider 36:4 47:6 record 4:2, 9, 15 5:4, 20 7:3 41:2 52:18 59:14, 20 61:13, 15, 18 63:13 69:16 70:13 89:16, 22 114:18, 21 155:6, 10 158:3 166:7 176:11 206:1, 5 215:6 248:16, 23 249:1 251:9 recorded 47:15 263:7 recruit 240:10 241:15 249:24 recruited 239:18, 19 249:23 250:16 251:3 recruiting 239:21 241:4 242:5 recruits 240:25 reduced 79:24 redundant 59:10, 12, 14, 16 65:1 refer 11:18 22:10, 13 29:20 30:9 31:19 37:18 123:20 133:18 135:5, 7 158:22 161:16, 18, 24 164:12 165:5, 18, 19 166:11 167:24 168:11 201:25 213:17 214:14, 15 215:13 232:12 236:6 243:1 244:13 262:6 reference 36:19 37:2 40:8 41:17, 21 75:11 97:8 113:8 141:5 169:9 171:7, 8 175:14 176:7 214:18 REFERENCED 3:6 43:10 48:19 77:8 134:24</p>	<p>references 35:6 115:25 125:12 175:23 referred 22:9 70:1 95:16 161:14, 15 162:4 164:3, 17 165:1 166:13 171:18 191:12 215:8 referring 6:6 9:6 11:19 22:10 29:15, 18 32:24 37:2, 23 43:1 48:7, 15, 23 49:11, 12, 14, 25 52:21 54:14 61:20 62:1 71:12 72:8, 17 78:25 82:23 83:8 84:19 85:21 86:19 88:1 93:14 97:13 99:19 101:9 115:21 122:18 123:9, 24 124:2 125:4, 17 126:11, 18 128:2 129:22 131:16 144:4 160:1 163:11, 24 176:24 188:6 213:12 215:24 218:1 221:3, 10 222:8 224:10 232:11 244:16, 21, 23 246:21 252:16 260:20 261:13 refers 111:12 133:19 144:5 162:3, 6 164:24 165:6 reflect 122:17 reflected 32:15 reflective 19:4 235:21 reflects 19:13 refresh 136:15 141:5 refuse 71:1 88:13 refused 69:10 70:19 71:1, 2 74:5, 12 82:16, 17 83:2 85:21 86:4 88:2, 4, 11 refuses 86:15 refusing 86:16, 17, 18 regarding 45:11 63:18 69:19, 25 154:9 156:6 158:2</p>
--	---	--	--

<p>174:3, 14 253:7 254:4 256:1 Regardless 35:1 186:21 210:19 region 31:4, 6, 8, 17 32:24 33:1, 4, 8, 13, 15, 25 34:4, 5, 6, 12, 13, 22 35:1, 5, 22, 25 36:2 41:10, 25 42:5, 7, 9, 12 44:5 46:6 109:10, 20 134:16 141:7, 9, 11 149:20 150:10, 19 151:13 203:1 246:12 regional 30:14, 18, 19, 23, 24 31:11, 21 34:6, 20 38:7 39:19 41:11 42:5, 8 43:20 45:12 73:13, 23 85:6, 7 109:21 110:3 133:5 134:18 135:2 136:19 143:6, 7 148:21, 24 149:12, 14 150:18 198:9, 11 201:5 218:12 222:12 226:9 245:4, 9 246:5 247:1 regions 13:19 31:2, 15 32:21 34:12, 15, 16, 24 35:17, 21 39:20 41:7, 11 42:3 43:8 45:18 77:14 80:19 85:10, 24 86:24 109:18 110:2 129:5, 6 134:17 138:4 140:23, 25 142:8, 11, 13, 14, 18, 19, 25 143:20, 21 147:25 148:7, 15 150:5, 8, 9, 11, 18 152:7 198:12, 24 201:15 203:10 245:25 246:12 regulated 102:4 258:15 regulations 16:3 regulators 17:14 49:8 136:10 197:11 regulatory 16:6, 7 26:1 143:25 144:6, 7,</p>	<p>8, 9, 14 197:20 200:16 261:8 reinforce 247:11 reiterated 47:4 related 16:4 25:5 159:24 207:11 240:6 relationship 12:4 117:18 199:11 200:20 relationships 40:12, 14, 21 41:18 47:9 149:15 relevant 23:22 207:13, 14, 16 208:19 209:3, 4, 11, 19 remain 12:20 45:23 remained 11:24 12:1 remember 33:24 57:3 58:23 71:22 112:6 157:13 232:18 remind 59:8 reminded 58:24 reminder 6:17 remiss 247:23 remove 161:7 removing 18:3 renamed 128:8 repeat 6:19 44:20 46:12 59:18 63:10 69:22 119:19 146:17 170:7 237:14 repeated 141:20 repeating 59:7 166:4 rephrase 6:20 93:25 192:17 rephrasing 159:2 replaced 12:14 109:13 replacement 184:4 212:7 report 24:20 26:21, 24 27:2, 3, 4 28:2, 14 30:25 32:6 41:25 70:25 85:5, 10 86:18, 23, 24 87:1, 12 109:14 178:12, 15, 18, 20, 22, 24 216:12 reported 28:17 31:15 41:10 42:12 108:23 109:17, 24, 25</p>	<p>110:3 127:21 128:15 143:7 178:13, 15, 25 225:22 236:18 reporter 6:21 reporting 24:20 26:11, 16 33:4, 13, 15 34:24 35:21 41:6 77:12 86:25 129:7 132:19, 21 133:3 137:25 140:24 143:1 reportings 24:17 reports 54:23 55:4 178:6, 7 represent 37:14 89:1 201:23 259:11 representation 126:2 representative 149:7 representing 48:2 136:10 reputational 25:24 request 50:24 51:7 54:12 144:8 216:14 requested 50:10 51:8 203:19 232:8 require 167:18 206:15 required 23:4 49:8 52:22 58:18 76:20 77:5, 6 156:15 240:17 requirement 17:13, 14 54:11 76:21 172:21 193:20 requirements 16:2, 7 122:15 147:18 240:22 261:9 requires 146:8 Re-read 63:12 resigned 153:18 resolution 202:4 resolve 201:3 203:14 resolved 203:16, 20, 24 resonate 258:2 resource 175:7, 10, 15 176:3, 25 177:5 resources 28:10, 14, 19 43:5 respect 16:24 17:1, 4, 5 18:9 21:21 47:11</p>	<p>48:14, 22 49:12, 19 53:20 56:16 59:2 63:7 64:3, 5, 9, 24 65:11, 20 80:4 101:15 102:24 103:13 111:20 112:1 117:18 125:23 131:3 141:4 142:13 179:1 189:15 194:3 217:17 245:7 251:13, 19 259:19, 21, 25 260:2 261:15 respected 83:7, 24 190:25 respectful 140:4 responded 60:12 responds 202:6, 10 response 38:13 responsibile 15:15 responsibilities 10:24 13:11, 21, 25 14:10, 23, 24 15:7, 8, 9 20:7 24:24 28:11 80:14 87:13 109:20 114:2 134:15, 19 135:25 138:12 141:2 142:17 144:22 148:9 149:21 154:25 182:17 198:8 201:11 232:25 244:17, 19 245:20 responsibility 15:19 16:19 25:12 86:2 103:5 104:11 131:2, 5 132:25 135:22 138:17 140:24 143:5 144:17 149:16 150:8, 10, 13, 14, 15 154:24 179:20 198:13, 18, 24 203:1 237:23 238:21 247:23 258:11 responsible 15:21 25:16 31:2 35:3 142:14, 18 148:12, 13, 20, 22 150:22 154:18 198:20 responsive 144:7, 8 rest 42:8 152:24 153:12 154:14 restate 44:15 76:4</p>
--	---	--	--

<p>194:8 restructuring 232:18 result 28:23 91:7, 15 118:18 resulted 72:12 results 115:14 146:21 retail 145:12, 13 239:25 retaining 44:6 retire 38:24 retirement 45:19 48:4, 5 174:22 retiring 154:7 retreat 197:4 return 88:4 returns 138:15 revenue 73:10 77:17 137:11 138:2, 5, 12 149:25 revenues 138:15 review 7:17 19:23 29:22 30:4 31:7 32:8 49:10 71:23 101:1 104:7 111:7, 20 112:17 113:10, 21 114:3 115:8, 15 121:1, 23 122:16 128:3, 19 130:20, 23 131:9, 17 132:12 134:8, 13 135:24 140:15 155:25 161:11 177:14, 17 178:16 179:15 180:2, 6 181:13, 16, 19 182:13, 20 183:10, 16 184:5, 11, 25 185:22 186:2, 15, 23 188:5, 6, 7 195:18 205:7, 8, 16 211:13 217:10 231:8, 19, 22 234:9 253:23 reviewed 29:3, 21 30:8 73:2 75:17 79:10, 13 reviews 31:3 139:24 143:10 172:18, 20 177:22, 23 178:4 179:2 184:23 258:8 revisions 205:12 reward 145:25</p>	<p>rewards 32:11 145:8, 21 RHR 50:13, 18 51:7, 12 53:24 54:9, 20, 22 55:9, 19 56:14 58:18 60:13, 21 72:3 185:5 192:3 RHR's 107:24 Richard 203:5 Ridge 7:7 right 5:3, 5 10:18 11:11 12:9, 18 16:18 20:11 25:18 29:19 30:15 33:16 37:15 38:8, 11, 17, 21, 25 39:3, 21 41:13, 22 42:1 49:23 53:5 54:21 55:10, 12, 17 60:12 65:24 66:17 70:21, 24 71:3 72:25 73:6 74:2, 18, 20 76:16, 20, 25 82:2, 5, 13 84:7, 8 85:4 86:5, 9, 18 87:5 90:2 91:16, 25 93:21 94:21 97:5, 13, 21 101:24 104:12, 13, 16 105:6, 9 107:16 108:7 109:11 110:6, 23 111:4, 15, 18 112:23 113:3, 22 114:15 115:19, 25 116:13 118:23 120:20, 23 121:12 122:4, 20 126:15 129:3, 24 132:12 133:7 137:17 139:1 140:22 141:2, 17, 23 142:11, 20 143:6 147:6, 14 148:18 151:23 153:6, 7 156:19 158:6 160:13, 16 161:4, 8, 25 163:1 170:1, 10 172:1, 4 173:20 174:17 175:5, 22 176:14 191:8 192:5, 7, 8, 10, 12 193:3, 9 195:19, 21 197:7, 15, 21, 25 198:19 200:5 211:1,</p>	<p>2, 7, 23 217:10 219:21, 24 220:6 221:12, 19, 24 222:14, 18 223:8 224:7 225:9 226:6, 12, 15 227:13, 19 232:14 233:21 234:15 236:22 238:18 241:1 242:7 243:3 248:3 249:16 250:8, 17, 24 251:16, 21 255:2, 18, 20 261:18 right-hand 222:19 risk 22:23, 24 24:12, 15, 18, 25 25:5, 6, 7, 10, 18, 20, 21, 24, 25 26:1, 2, 3 94:15 130:24 131:1, 3 139:15, 16, 18 154:19, 20 155:1 180:3 200:16 258:8, 11, 16 risk-related 16:3 risks 25:2, 22, 24 26:2 131:4 200:17 role 10:5 12:11 13:15 18:23 20:6 24:22, 23, 25 26:23 27:11, 15, 20 30:22 31:1, 10, 12, 21 35:19, 20 39:13 41:5, 12, 15 42:4 43:17 61:5 66:10, 11, 12, 14 73:17 74:14, 25 77:15 79:8 80:4, 12 82:11 85:6 86:2 88:3 96:13 108:5 112:14, 15, 16 113:24 114:7 115:17 121:24 122:13, 14, 15, 21, 22, 23 128:23 132:1, 2, 3 133:1, 2, 10 138:8, 9, 10 142:15, 20 143:2, 5, 11, 13, 20 146:5, 13 147:17 148:12, 21, 22, 23 152:5, 6 179:1, 4 182:9 183:19 185:10 186:14 187:8 188:1, 10, 19 192:24 198:25 225:19 228:17, 21 233:7, 16, 17 234:20,</p>	<p>21 235:1, 13, 14, 19, 22 238:10, 22 241:12, 13, 23 243:19 245:14, 25 246:5, 17 247:9 250:6, 21, 23 251:1 roles 27:2 74:4 76:15, 16 82:12, 13 104:11 134:18 148:17 226:1 234:25 242:7 Rome 2:11 5:8 room 178:21 roots 44:4 rotational 31:13 143:12 roughly 11:2 77:3 110:7 157:17 243:23 route 182:6 Royal 10:1, 3, 4, 5 RP 38:4, 7 rubber 54:7 100:13 102:2, 23 Ruben 239:15 rule 88:22 run 16:8 85:23 110:7 122:7, 8 133:2 150:17 running 23:11 108:21 109:24 144:16 runs 203:10 249:21 runway 65:23 113:2 174:18 228:14 < S > S/Sydney 263:18 Saba 2:1, 5 3:4 4:10, 11, 18 5:2, 5, 18 8:20 9:1 10:12 29:10 30:1, 3 33:20 36:17 40:15 44:22 47:10 48:1 50:19 51:18 52:2, 8, 10, 13 53:13 54:13 57:8, 16 58:3 59:12, 17 60:4 61:13, 19 62:10, 15, 20 63:4, 12, 15 64:20 65:4, 7 66:20 71:11 76:5 78:18, 21 79:9 81:4 87:25 88:18</p>
--	--	--	---

<p>89:10, 21, 23 90:12 91:19 92:12, 21 93:3 94:24 95:7, 14, 22, 23 96:4, 14, 19 97:5, 18 98:18 100:20 101:7 105:15, 19 106:8, 23 107:4 108:16, 18 110:16 112:19 113:14 114:13, 16, 23 120:6 123:1 124:19 125:11 126:8 127:7 129:21 130:2, 6 132:5 139:8, 21 140:7 152:10 154:11 155:6, 12 158:6, 19, 25 161:2 165:4, 16, 22 166:2, 8, 9 167:9, 19, 22 168:9 169:6 170:5, 8, 14, 24 171:23 173:5 174:1 175:13, 19 176:1, 10, 14, 18 177:9 192:16 195:8, 12 201:18 204:1 206:1, 6, 24 209:11, 13 210:4, 7 211:12 212:20, 21 213:25 214:5, 24 215:7 218:10 223:11 227:5 229:16 230:12 231:1 240:20 242:18 244:5 248:23 249:2 252:8 253:10 254:18 259:1 260:13 sake 6:20 salary 77:18 sales 133:19, 20, 23 134:9, 12, 16, 19 135:20 136:1 144:24 Sarah 7:11 sat 35:16 193:9 save 264:10 saw 125:2 155:22 226:2, 22 227:1 232:1 saying 55:11 78:24 81:19 165:17, 23 166:4 173:23 204:12 208:6 209:9 210:13 215:2 229:5 249:14, 16, 17</p>	<p>says 11:20 30:16 31:24 38:2, 22 55:4 66:1 75:18, 19 82:23 85:16 88:1 91:18 93:22 94:5 114:9 115:24 116:18, 20 119:2 124:24 127:18 128:3 129:19, 20 130:18 131:22 135:2, 4 140:12 142:12 146:25 155:17 160:14, 23 175:20, 22 217:9 219:22, 25 221:22 225:3 226:13 236:23 243:6 244:16 245:3 255:3 259:6 scale 73:13 149:11 scenario 165:15 scenarios 125:9 schedule 21:2 Schramm 23:19 science 9:18 scope 62:18 76:24 137:10 score 117:2 118:20 scores 117:1, 7, 22 118:17 119:1, 8, 22 Scotland 10:1 seal 263:13 season 138:22 second 4:20 14:11 29:18 35:8, 10 43:1 59:9 84:19 135:10 136:5 137:18 142:7 149:2 196:17 219:15 252:19 261:14 262:1 secret 68:4 section 146:17 261:10, 16, 24 262:5 sections 261:25 262:2 sector 144:13 securities 137:12 see 11:17, 21 14:8, 19 23:21 25:9 29:19 30:10 36:21, 23 37:1, 19, 20, 25 38:1, 5 45:25 47:5 48:12 67:2 72:15, 23 88:5 89:5 94:17 105:9 115:22 116:1 118:17</p>	<p>121:14, 19 125:20 126:22 128:4, 21 130:3, 20 136:13 141:16 145:3 146:22 148:3 152:13 155:23 160:2, 5 172:20 177:4 184:23 201:22 202:2, 14, 15 204:24 205:5 206:8 212:25 214:21 215:22, 23 216:2, 4, 20 217:18 218:13, 14 221:6, 21, 25 222:19, 20, 23 223:5, 6 226:25 230:19, 22 231:5, 12, 16, 17, 18 233:24 234:1, 10, 11 235:6 239:4 240:4 241:6, 24 243:8 245:5 247:3 252:22 258:12, 21 seeing 124:17 125:1, 2, 3, 9 128:19 219:5 254:2 255:18 seek 236:24 seeking 89:12 91:1, 15, 21, 22 92:3, 15, 24 93:9 seen 29:5 88:23 111:6 124:16, 25 126:1, 5, 19 127:5 128:18 140:14 155:19 164:2 165:2 205:13 213:13, 14, 23 214:2, 11, 13 217:5, 23, 25 218:7, 9, 17, 23, 24, 25 219:2, 16 220:7, 10 221:7, 8, 13 222:10 223:19, 20 224:7 230:16 232:10 241:17 258:15 select 187:20 selection 50:14 send 14:4 78:10 185:25 186:5 senior 110:9 172:7, 8 248:3 sense 162:6 233:4 sensitive 90:19 sensitivity 183:3</p>	<p>sent 14:2 39:5 231:8 254:6, 21 255:12 sentence 11:20 54:15 61:23 84:20 93:17, 23, 24 142:9 sentences 146:18 separate 27:1, 7, 9, 15, 17 34:7 142:24 143:1 154:13 separately 45:16 September 1:17 4:1 9:24 11:3 71:13 264:2 sequence 103:16 128:13 series 6:18 serious 102:3 seriously 18:5 54:5, 6 133:24 serve 124:10 138:14 155:2 served 195:15 services 44:7 142:6 serving 120:16 session 17:8 20:21 53:17, 18 72:2 102:8 197:5 261:11, 17 sessions 18:16 19:18, 19 set 21:4 29:7 90:10 104:9 151:1 179:18 191:21 192:18, 22 193:4 194:1 198:15 231:10 235:11, 18 236:7 237:10, 18 238:4 241:5 242:13 263:12 sets 92:5 192:4, 9, 13, 18, 20 193:4, 6, 18 235:17 236:6, 8, 10 setting 136:9 settle 98:12, 21 settled 134:6 seven 40:17, 19 67:14 255:15 seven-plus 252:21 Shaffer 8:17 9:3, 8 19:1, 22, 25 20:8 23:11 28:21 36:3, 5</p>
---	--	--	---

37:6, 13, 19 38:2, 19
 39:5 41:22 43:5, 13
 45:10, 11 46:4, 11, 17,
 22 47:12, 16, 17, 22
 51:8 67:12 70:1, 17
 71:21 78:5 84:3
 88:7, 10 179:1, 14
 181:15 188:5, 12
 194:4, 5, 10, 24
 195:13, 19 196:7
 201:24 202:1, 10, 17
 204:21 220:9, 18
 228:9 229:2 231:4,
 22 237:12 240:24
 242:16 253:15
 254:23 257:19
Shaffer's 37:10, 11,
 15 46:7, 13, 16
 204:19 234:7 241:21
shaking 6:22
share 100:21 179:10,
 12 234:10 253:23
shared 47:6 100:16
 101:1, 4 156:12
 158:13 195:5 206:14
 255:10
shareholder 12:2
shareholders 87:14
 94:15 103:7 138:16
 175:1 180:22
SHEET 264:1, 13
 265:1 266:1
shifted 128:10
short 77:2 237:25
shortly 43:4, 14 45:1
 46:9 68:22 109:10
 157:12, 16 196:20, 21,
 25
shoving 202:22
show 149:10 222:22
showed 229:24
shown 119:14
shows 216:16
shy 258:19
sic 38:14
side 145:20 151:5
 173:13 201:10
 202:23 222:19
 236:16, 21 262:3

SIGNATURE: _____
DA
TE 265:23 266:23
signed 140:16, 19
 264:16
significant 15:24
 90:15 144:23 145:22
 234:17 238:9
significantly 72:9
silver 161:14, 16, 18,
 20, 21 162:3, 5, 9, 16,
 18 163:8, 12, 25
 164:4, 13, 18 166:16,
 18 168:22 169:8, 14
 171:7 172:23
similar 114:1 150:4
simplicity 261:23
simultaneously 261:5
single 17:9 48:18
 174:11 190:8 233:12
sir 94:24 207:13
sit 31:8 32:10 169:7
 229:17 243:16
site 146:9
sits 220:24
sitting 82:12
situation 87:2
 171:18 173:23 183:4,
 23 187:2, 20 188:3
 194:16 206:15
 207:12 208:5, 20
 209:10 210:6, 19
 212:12 241:22
situations 165:17
 180:11 247:14
six 67:14
size 137:17
skill 104:9 123:10
 192:4, 9, 13, 17, 20
 193:4, 6, 18 194:1
 235:11, 17, 18 236:6,
 8, 10 237:18
skills 122:15 143:17
 192:7, 12, 23 193:1
 236:19, 24 238:2
 240:9
skin 166:15
skip 116:10
slightly 238:21

slow 239:24
sly 161:25
small 199:9
smart 161:25 171:13
Smith 2:4 4:12, 13
smooth 149:24 151:4
smoothly 150:12
 199:5
sole 150:13, 15
soliciting 254:6
solidified 104:6
 108:5
solve 202:4
solved 203:17
somebody 40:13
 143:15 160:19
 217:14 252:4
somebody's 251:19
someday 107:15
 228:14, 16
someone's 64:10
 166:15, 16 168:23, 25
 169:16 174:23 203:8
 217:1
soon 208:10
sooner 207:25 210:24
soonest 208:12
sorry 12:22 201:4
 255:21
sort 59:10 170:11
sought 92:7 94:2
 180:8 236:25
sound 197:18, 21
source 124:3
South 250:13
southeast 137:20
SOUTHERN 1:2 4:5
space 144:12 189:25
 190:1
speak 44:16 46:6
 50:5 59:15 158:13
 176:11 201:8 203:2
 258:14
speaks 87:6 89:16
 90:7 91:18 112:3
 114:5 129:17, 25
 131:20 138:20
 175:16
special 21:4

specific 84:18 95:16
 96:23 111:11 154:8
 162:10 168:1 174:2
 176:2 240:16, 21
specifically 37:18, 23
 48:3 57:4, 10, 17
 60:6 67:8 69:1
 102:13 160:1 174:14
 176:3, 23 242:3
 251:8 259:20 260:1
 261:17
speculate 33:23 54:3
 90:9 92:8 165:8, 10,
 15 166:14, 20, 22, 25
 167:1, 12, 13, 18, 19,
 22 168:4, 5, 6, 14, 20
 169:5 171:5, 6
 208:13
speculating 33:22
 67:13 227:4
speculation 33:18
 54:2 167:18, 25
spell 5:20
Spence 11:7 12:15
 48:8, 11, 25 49:13
 50:9, 18, 21 51:10, 12,
 13 53:22 54:21, 24
 55:19 56:7, 14 59:4
 60:21 61:24 63:5, 16
 66:23 67:18 69:25
 70:8, 25 71:3, 16, 18
 74:13 82:16, 18, 24
 83:4, 6, 15, 24 84:9
 85:5, 10 86:9, 19, 23
 87:1 98:11, 12 100:3
 103:20 106:17, 21
 107:1 142:18, 22
 151:17 183:13 184:6
 190:21, 24 193:7
 194:1 195:14 198:3
 200:24 218:9 219:20
 222:9, 11 223:4
 224:7 226:5 227:12
 229:21 243:5 244:24
 245:15 246:4, 8, 25
 248:2 252:18, 19
 258:4
Spence's 67:7
 211:13 212:12 245:3

<p> spend 17:25 31:8 spent 145:18 spoke 46:9 55:21 83:12 197:4 SS 263:3 stack 53:4 stacked 53:4 staff 13:20 stage 136:9 Stagnaro 2:5 stakeholders 221:22 stamp 36:20 37:3 54:7 100:13 102:2, 23 175:20 177:11 201:20 212:23 242:20 244:7 252:10 253:12 259:3 260:15, 21 stamped 110:22 114:25 155:14 stand 38:7 standard 200:13 start 202:8 204:24 230:19 started 10:22 104:6 109:10 136:19 starting 134:12 230:18 262:7 starts 84:20 223:23 State 1:21 4:15 5:19 66:25 76:9 80:12 117:15 145:23 263:1, 7, 19 stated 45:20 75:8 91:6 92:17 95:4 139:23 statement 72:13 73:6 101:16 170:22 210:11 251:6 258:7 statements 56:19 97:16 99:2 STATES 1:1 4:4 24:25 150:7 158:23 219:19 226:16 status 8:13 stay 38:24 39:6 116:18, 21 117:11 stayed 11:6 82:15 staying 182:7 218:1, </p>	<p> 20 219:9 248:9 Stein 203:6 stenotype 263:8, 11 step 39:19 41:5, 8, 14 53:17 61:3, 5 74:5 82:17 104:14 108:4 112:22 133:4 180:13, 21 181:25 184:14 186:11 187:5, 21 188:2 192:25 206:15, 16 207:1, 3, 20, 24 208:20, 21 209:2 210:13, 24, 25 211:5, 8 228:16 235:15 243:18 stepped 12:2, 22 41:4 79:8 108:23 146:2 154:6 stepping 42:4 55:11 180:25 183:23 185:8 210:20 steps 187:19 Stevens 178:19 sticking 161:22 sticks 163:7 stone 247:12 stood 77:1 stop 24:1 strategic 13:13 16:5 102:16 103:21 112:13 135:6 189:15, 16 190:3, 14 236:12, 14 strategies 119:5 190:5, 6, 12 strategist 190:4 strategy 10:10 119:3, 12, 13 137:23 188:16 189:20 190:10 191:6 197:4, 5 Street 1:19 2:12 90:19 173:14 strength 112:12, 15, 17 149:10 201:13 217:18 226:15 232:24 239:4, 7, 10 240:12, 13, 15 241:11 242:11 248:18 </p>	<p> strengths 123:17 190:7, 18 191:13 234:13 strong 102:5 112:10 114:9 121:1, 20 123:12 strongly 20:23 structure 34:7, 20 42:8, 13 132:23 133:3 142:24 198:10 199:12, 13 structured 16:9 17:8 24:23 26:19 49:7 228:4 struggled 198:23 strut 163:23 strutting 161:22 163:8, 10 study 121:18 stuff 258:1 subject 15:17 18:1 20:3 253:17 subjective 242:8 subordinates 54:23 55:10 58:8 subsequent 46:4 196:2 Subsequently 229:10 substance 91:3 98:8 substantial 137:14 145:15 substantially 70:21 94:22 117:18 142:6 subtly 160:11 173:8 succeed 100:4 194:7 195:1 succeeded 11:7 12:14 126:15 succeeding 58:13 60:23, 25 194:16 success 45:21 138:24 139:5 141:25 142:11 147:8, 25 248:21 successful 36:10 38:15, 21 40:18 54:5 136:9 147:19 150:3, 21 succession 17:1, 6, 11, 12, 15, 18, 19 18:3, 10, 15 19:23 48:8, 15, 16, </p>	<p> 23 49:4, 7 64:3, 6, 15, 24 65:11, 21 66:24 67:19 70:1 107:14 124:24 125:7, 24 126:3, 17 154:9 183:8 185:15 186:23, 24 209:23 210:17 212:6 213:4, 10 219:15 223:1, 17 224:5 227:9 229:3 230:15 231:11 232:3 242:25 243:3 244:11 252:14, 17, 18 253:18, 22 254:25 259:8, 20 260:1 successions 219:23 successor 18:18, 19, 21 61:4, 7, 12 66:13 97:12 105:5 180:10, 16, 18 181:1, 4, 9, 10, 21, 23 182:4, 6 183:2, 6, 7 184:15 185:9, 15 186:7, 9, 18, 22 187:1, 12, 21 188:10, 25 189:1, 4, 5, 8 194:19 195:24 196:12, 13 206:9, 20 207:18, 19, 22 208:2 209:5, 21 210:20 211:6, 15, 17, 18 212:14 217:13 219:18 229:22 successors 17:20, 21 19:10 187:7, 11, 13, 16 227:19 sue 99:6 sued 91:10 100:1 suggested 195:7 suggesting 250:5 suit 71:7 75:21 84:5 90:16 91:23 93:10 134:3 summaries 121:21 summarizing 186:1 summary 121:9, 15, 16 summer 178:8 supervisor 128:23 support 13:13 15:2 17:19 78:1 86:8 98:10 103:11 112:25 </p>
---	--	---	--

116:8 119:13 147:25
 148:6 149:3 175:5
 188:18, 19 194:21, 22
 196:8 200:8 201:13
 221:14
supported 108:4
 113:10 143:22 193:6
supporting 105:11
supportive 188:20
supports 103:6 105:4
supposed 80:6
Supreme 92:19
sure 13:12, 25 15:15
 16:15, 17, 20 19:2, 9,
 12 20:6 21:19 23:8
 24:4 25:2, 17 27:8,
 21 31:2 33:10 34:8
 37:16 42:25 46:18
 58:19 61:6 63:25
 65:22 69:3, 4, 11, 23
 73:20 76:6 77:6, 18
 79:17 80:10 82:8
 99:25 101:13 108:22
 114:13 118:2 119:24
 124:14 129:11, 13
 131:14 134:17, 22
 136:1 141:8 148:8,
 13, 16, 18 150:12, 20
 151:7, 9, 11 152:7
 169:19 172:18 173:5,
 19 174:10 176:23
 179:5, 7 180:24
 182:25 187:2 204:25
 206:21 210:25
 216:12 224:8 226:22
 228:20 232:4 233:1
 237:15 242:6 251:5
 257:9, 12
surprise 69:14
surprised 56:1 59:1
 83:16, 18 178:1
 261:20
survey 119:15
Susan 8:11, 14 71:24
 84:4 153:13, 14
suspect 127:22
switched 132:21
switches 121:8
sworn 5:14

Sydney 1:21 4:21
 263:5
sync 204:25 220:21
synergies 150:1
system 74:21, 22

< T >
tactical 147:12
tactics 85:17, 18
 87:5, 21
take 6:23 10:20
 14:5 16:1 18:4 25:2,
 25 35:22, 25 36:7
 39:12, 17 40:17, 21
 45:6, 21 47:18 54:4,
 6 55:25 56:8 57:12,
 21 65:23 73:22
 74:12, 14 75:23
 80:13, 18 82:15 83:5,
 6, 23 89:7 114:12
 116:1 122:10 125:6
 133:24 136:25 140:4
 154:23 183:18, 19
 185:23 196:18
 200:10 205:2, 24
 224:18 233:9, 20
 234:24 235:19, 21
 237:22 238:15, 21
 239:23, 24 240:1, 3
 245:15, 19 247:9
Taken 1:16 5:22, 25
 6:2 61:16 74:6 82:6
 101:25 102:21
 114:19 140:24 155:8
 162:2 171:15 196:20
 206:3 248:24 264:2,
 8
takes 66:11, 12
 139:1 220:25
talent 18:7, 21 19:16,
 22 26:18 49:3, 20
 50:8, 11 52:25
 100:10 101:1, 10, 11
 104:7 106:13 107:15
 112:16 147:25
 148:18 152:2, 7
 154:15 172:11
 180:17 185:1 186:24
 187:10 204:6, 16
 205:19 206:23 212:5

213:4, 10 214:1, 8, 17,
 20 215:1, 9, 12, 13, 21,
 22 216:3, 5, 8 218:8
 220:18 221:4, 11
 222:9, 10 223:17
 224:14, 16, 20 225:16,
 17 226:5, 8 227:23
 228:12 229:20
 230:15 231:6, 22
 232:3, 24 238:6
 239:10 240:5, 9, 10,
 11, 23 241:1, 3, 4, 15,
 16, 20 242:6, 24
 244:11, 24 248:3, 10,
 11 249:13 252:14
 253:18, 21 254:4, 11,
 24 256:1 259:7, 19,
 25
talk 14:4 17:10, 12
 23:13, 24 38:3 57:2
 58:15 60:17 68:12
 80:20 83:16 84:2
 108:15, 16 144:19
 159:9 174:5 194:14
 195:22 234:9, 11, 12,
 13 241:11, 24
talked 8:11 24:2
 56:6 58:8 188:22
 190:22 196:7 227:23
 228:13 251:24
talking 8:9 11:10
 23:19 25:20 33:24
 38:11 44:17 62:6
 77:7 97:15 103:17
 125:15 145:5 161:19
 166:15 173:3, 23
 220:12 232:2
talks 18:16, 17
 125:18 133:20
 173:12
Tanner 124:1, 7
 157:13, 15 158:11, 15
 159:9
Tanner's 158:17
task 150:15 191:7
taught 156:23
Tayfun 67:10 68:16,
 18 69:9, 11, 21 70:2,
 6 181:12 185:19

219:23 223:7 227:18
teach 156:10
team 13:13 14:20
 15:2 17:10, 11 18:22
 19:1, 19, 22, 25 20:1,
 5, 17, 24, 25 21:6, 11,
 17, 19 22:9, 10, 13, 19
 23:5, 10 24:6 31:14
 112:21 115:21 139:5
 147:7, 8 164:20
 183:18 191:8 228:23
 239:12
teams 133:21 144:2
technology 23:17
 189:20, 22 190:15
technology-related
 149:19
tell 22:7 36:9 57:9
 85:11 86:10 88:7
 99:13 123:21 160:25
 174:18 183:17
 190:24 194:24
 195:13 203:21
 223:20 226:21
 231:17 232:7 240:13
telling 86:25 162:23
 258:20
tells 86:15
template 240:21
 243:3
ten 30:20 31:12
 228:4 229:11
tenure 26:24 147:3
tenured 146:19 147:1
term 52:12 158:21
 161:16 163:20 167:2
 169:8 173:19, 20
 191:23 243:8
terms 38:16 103:16
 209:16 210:7 237:10
testified 47:2 63:10
 79:2 105:24 125:25
 209:22 210:2 218:7,
 17 259:12
testimony 48:19
 66:1 78:17 79:1
 80:3, 6 105:25 107:8
 186:16 188:23
 206:13 210:4, 8

text 9:7, 10, 15 21:25
22:6 37:5, 17, 19, 21
38:22 39:1, 4, 16
41:23 45:9 46:10, 17,
19 185:25 201:23, 25
258:1
texts 202:20
Thank 22:3 51:23
52:2 110:21 216:1
theirs 56:3 248:18
themselves 87:20 100:2
Theresa 124:1, 7
157:13, 15, 21 158:10,
12, 15, 17 159:9
Theresa's 159:6
thing 18:2 40:9, 10
66:19 80:12, 22, 23
101:24 157:4
things 4:25 14:7
17:21 21:15 22:5
23:20, 24 26:11
54:25 61:9 85:1
102:22 103:10 104:9
117:2, 3, 5 119:14
143:10 162:1 174:20
179:21, 24 180:23
191:12 193:23 199:5
200:8, 22 201:7
203:6 225:25 233:8,
9 243:23 247:13
257:12
think 4:18 16:8
17:24 18:11 21:23
25:23 34:25 35:8, 18
40:11 42:2 43:19, 21
47:8 51:9 52:21
55:2 56:25 67:14
76:21 79:18 81:23
83:12, 17 99:7, 12
101:2 104:13 108:9,
21, 22 109:17 116:24
118:1, 24 125:15
128:7, 12 133:8
145:12 146:15 153:5
154:22, 25 157:15
159:15, 22 161:25
172:2, 4, 10, 25
173:19 178:21
179:23 187:10, 11
188:14 192:21 196:5

197:14, 24, 25 198:2,
9 200:5 201:13
208:22 221:2 224:3
235:3 239:9, 14, 17
240:9, 11, 23, 24
241:7, 22, 25 242:9
243:22 248:13
250:14, 15 255:15, 17
257:7 262:1
Thinking 33:9
108:12 189:16
190:14 224:19
230:21, 23 232:2
247:6, 13 252:25
Thinking's 253:4
thinks 23:21 164:21
217:12
think's 248:20
THIRD 1:9, 19 2:17
4:6 5:9, 10 6:5, 12,
13 7:21, 24 8:2, 5, 8
10:18, 21, 22 11:11,
19 13:16 27:7 28:13
30:13, 14 32:18
36:22 43:5, 6, 9, 18
44:7 45:21, 24 48:9,
10 50:22 51:3, 12, 14
53:23 55:16, 20
57:22, 23 59:10
60:18 64:6, 25 65:12,
21 71:14 81:8, 11
88:2, 21, 25 89:14, 25
90:16 91:1, 4 93:11
97:2 98:6, 11, 19
99:3, 13 100:4, 7
104:22 107:22 110:8,
23 111:12 113:2, 16,
17 115:1 116:6, 7
120:8, 9 123:3, 4
124:3, 21, 22 125:18
127:9, 10 130:8, 9
131:16 132:7, 8
133:16 135:7 136:5
137:12 138:19, 24
140:9, 10 142:1
143:24 146:10
155:15, 17 159:3
160:2 166:12 167:25
168:12 172:1 174:2,
15 175:4 176:2

177:5, 11 184:8, 13,
19 187:9 191:2
201:20 204:3, 4
212:23, 24 213:7, 10,
17 214:6, 15, 17, 25
215:21 218:2, 21
219:4, 9, 10, 12
221:10 222:8, 24
223:13, 14 224:11
226:3 227:6 230:8
232:11 240:21
242:20, 21 243:1
244:7, 8, 13, 23
246:22 250:22, 23
251:1, 8 252:10, 11,
16 253:12, 17 259:4
260:21 261:1, 2, 3
264:4
third-party 52:23
53:2
Third's 29:16 32:21
43:8 45:17 139:22
160:3 161:6 190:23
199:12
Thomas 2:17 5:9
thought 35:25 40:20
42:9 44:6 53:10
94:12 97:15 104:8
106:4 121:9 156:11,
24 161:23 171:12, 13
172:12 179:10
181:10 183:21, 22
188:2 189:8 199:14,
18 205:20 210:20
232:16 233:4 238:12
243:18 246:14
258:16
thoughts 100:11
threat 189:24
three 52:6 66:9, 15
146:15 157:24 163:4,
21 189:6 190:22
195:4 198:1 200:21
202:7 204:23 212:8
233:23 243:6, 10, 13,
16, 25 252:20 256:5
three-hours 260:7
three-page 152:11
three-plus 131:24

252:20
threw 229:7
Thursday 16:14
83:10, 11, 22 231:11
256:8, 10, 11
tie 203:2
ties 201:8 203:8
tight 196:23
Tim 48:8 50:9, 18,
21 51:10, 11, 13 53:4,
22 54:21, 23 55:5, 10,
15, 19 56:7, 14 57:21
58:12 59:4 60:13, 21
63:5, 16 67:6, 21
68:1, 4 69:3 70:8, 25
71:3 74:13 77:11, 12,
13 82:16, 18 83:4, 6,
15, 24 84:9 85:5, 10
86:8, 18, 23 87:1
98:11, 12 100:3, 14,
25 103:20, 25 104:1
106:17, 21, 25 142:18,
22 143:19 151:17
184:6 185:4, 13
186:6 189:25 190:10,
13, 14, 21, 24, 25
191:1, 13, 15 192:1, 2
193:7 194:1 195:14
198:3 200:24 201:4,
9 211:13, 20, 21
212:4, 12 218:9
219:20 222:9, 11
223:4 224:6 226:5
227:12 229:21, 23
243:5, 14, 18 244:24
245:3, 15, 24 246:4, 8,
14 248:2 252:18, 19
258:3
Time 1:18 4:2, 7
12:15 14:12 15:12
16:11, 14, 18, 22 17:3,
17, 23, 25 18:1, 5
19:2, 8 20:5 23:11
26:14, 18 27:6, 13, 16,
17, 18, 24 28:20 29:4,
5 30:23 31:8, 16, 18
32:16 33:3, 8, 10
34:22, 25 35:19, 20
37:25 38:20 40:6, 21
41:7 42:5, 14 43:18,

<p>19, 25 44:23 45:15 48:17 49:23 53:14 54:18 59:10 61:17 66:11, 12, 13, 25 68:24 73:2 74:24 75:8 77:1 79:5 81:7, 18 82:21 89:7 102:23 103:3, 8, 10 105:14 108:12 109:2, 5, 21 110:2, 4 111:22, 25 112:15 113:22, 24 114:17, 20 115:6 117:14, 19 118:10 120:13, 17 121:22 124:1 125:6, 15 127:18, 20, 25 128:3, 16 130:14, 24 131:2, 11 132:15, 20 133:4, 9 134:11 135:20 137:12, 25 138:6 140:18 141:13 143:8 145:21 150:18 151:6, 15, 16, 17, 20, 22 154:4, 5, 12 155:7, 9 164:1 168:7 174:10, 19 177:19 180:7, 11 182:15 183:2 191:17 196:14 198:25 203:14, 16, 19, 23 206:2, 4 220:25 227:1 231:10 232:17 238:23 247:7 248:25 253:23 256:11 260:10 timeframe 12:3 17:7 22:11 33:24 42:7, 11 43:15 44:17 84:16 103:16 108:25 109:3 110:7 111:3, 4 123:7 141:11 153:7, 20 154:10 157:17 159:8 196:23 197:16 204:20, 22 205:6, 10 210:23 220:23 243:20 251:24 253:2 timeframes 163:18 timeline 66:19 125:8, 19, 23 126:3 197:22 207:19 243:14, 23</p>	<p>246:25 timelines 136:21 timely 152:1, 8 times 26:13 34:10 52:7 81:20 101:25 134:21 139:23 157:18, 24 161:23 162:7, 10, 11, 19 163:1, 3, 4, 21, 23 165:24 166:11 174:8 208:23 218:25 257:11 timing 28:5 58:12, 15 59:4, 23, 24 69:11 83:16, 19, 20 84:15 110:1 174:21 196:17 207:7, 8, 10 208:4 211:2 timings 128:13 Tim's 55:21 64:3 104:10 190:25 191:13 title 12:24 26:10 27:22, 25 44:2 128:3 135:14 136:22 141:1 155:17 titled 4:5 Today 4:1 38:3 48:2 73:15 75:25 76:6 134:2 154:17 169:7 188:23 229:17 today's 7:14, 18 told 36:5 39:2, 11, 14, 17 40:11 45:15 47:2, 4 48:5 57:8 60:12 69:8 74:13 78:6 83:3, 13, 14, 18, 23 84:20 85:14 99:20 182:22 183:21 185:7 189:6 193:14 194:5, 13, 21, 24 195:13, 25 196:1 202:11, 17 217:9, 11 250:4 257:2 tolerance 25:5 tolerances 25:7 tolerant 161:9 tolerate 173:22 Tom 251:3 ton 215:17</p>	<p>tool 123:12, 18 124:4 155:18 top 53:5 70:20 72:21 74:3, 4, 12 75:6, 25 76:6, 9, 11, 14 82:9 86:16 87:19 88:13 93:16, 17 113:11, 12 122:11, 12, 22 144:24 145:8, 16, 19 146:7, 13 148:16 157:1 200:11 229:11 233:8 234:14, 18 235:1 236:1 238:25 239:1, 11, 12 241:18 249:6, 8, 9, 10 251:15 topic 63:20 99:6 254:16 258:22 259:19 total 28:12 31:21 72:14, 19 75:18 157:18 232:19 233:2 totality 242:9 totally 95:6 222:5 touch 177:24 179:3, 21 200:7 touching 179:14 tough 118:12 232:21 town 172:18 track 61:8 183:25 tracked 251:8, 10 traffic 201:6 trailed 81:9 train 156:25 183:25 training 156:6, 8, 11, 12, 14, 15, 19 157:20 158:1 159:3 161:3, 6 170:15 173:18 174:3, 4, 6, 7, 8, 9, 14 trainings 159:7 trains 61:8 198:18 212:4 traits 191:9, 10 transaction 150:21 197:12, 14 transcribed 263:8 transcript 263:9, 10 264:7 transformation 118:14</p>	<p>transition 72:10 77:11 135:16 154:21 transitioning 154:7 transparency 24:5 257:3 transparent 21:9 257:9 transpire 56:17 transpired 79:20 136:22 153:17 165:10 treasury 200:3, 4, 7, 11, 20 tremendous 44:6 82:11 137:19 229:10 trend 117:25 trends 23:20 trial 152:17 tried 23:7 81:2 142:1 trip 113:1 145:21 161:20 162:12 trips 162:13 true 141:23 263:10 264:10 try 7:1 16:12 52:20 96:15 176:21 200:10 202:4 trying 33:24 57:9 90:25 105:24 106:24 123:17 135:14 149:7 170:23, 24 171:3 194:9 196:14, 15, 16 199:12 200:12, 17 232:23 261:24 Tuesday 83:12 turn 66:21 86:1 111:11 133:16 218:20 219:10 221:11 222:24 226:3 227:6 turnover 148:10 Tuzun 67:10 68:17, 18 69:9, 21 70:2, 6 181:12 185:20 219:24 223:7 227:18 Twice 59:22 157:21 twin 93:20 94:2 two 22:19 66:9 70:5 72:25 74:8 101:4, 9</p>
---	--	---	--

146:15 163:4, 14, 21
 172:5 186:13 194:6
 195:1 196:25 199:20,
 22, 24 203:7 204:23
 212:7, 22 216:19
 218:12 219:18
 221:19 222:13 223:4
 226:10, 11 227:13
 229:24 234:16
 238:11 239:14, 17, 18
 243:6, 7, 10, 11, 13, 16,
 25 247:2, 10 252:20
 260:6 261:4
two-plus 218:13
 219:20 222:13
type 6:8 17:21, 25
 21:15 23:3 103:3
 112:14 114:10 127:3
 161:9 179:24 180:22
 232:21 257:14
typed 32:2 38:17
types 119:17, 20
 143:10 145:9 163:9
typical 16:19
typically 13:21
 16:14 26:21 76:20
 81:5, 15, 17, 24 99:10
 116:6, 9 119:7
 145:11, 23 177:24
 204:18 256:13 260:5
typo 38:16

 < U >
uh-huhs 6:23
uh-uhs 6:23
ultimate 185:17
 221:1
ultimately 41:25
 200:24
Um 22:23
unanimous 107:20
unanimously 193:8
unbiased 156:10
 157:20
uncommon 81:11
unconscious 156:10,
 24 157:20 158:2
 159:4, 11, 13 161:7
 170:1, 9, 17

unconsciously 160:11
 173:9
Undergrad 9:18, 21
underneath 141:10
 241:23
undersigned 263:5
understand 6:19 7:4
 51:19 52:8 53:2
 65:16 89:24 96:9, 13
 106:24 165:14
 168:13, 16 169:3, 22,
 24 170:8, 15, 24
 175:24 176:19 177:1
 194:9 196:7, 16, 17
 210:4
understanding 28:9
 46:24 50:25 56:4
 62:11, 16, 17 63:1
 67:20, 22 87:4 92:13,
 14, 22, 23 93:7, 9
 95:5, 7, 8, 12 96:19
 103:22, 23 141:24
 147:16 152:21
 153:13 159:10, 20
 161:4 170:25 182:9
 184:17 189:18, 19
 250:6, 25 251:4
 264:13
understandings
 189:21
understands 52:5, 14
 138:23 152:25 182:3
 190:1
understood 25:3
 67:25 68:5 78:1
 165:12 167:7 188:24
 190:18
undertaking 126:16
unintentionally
 160:11 173:9
Union 21:3 127:2
UNITED 1:1 4:4
University 9:21, 22
unusual 162:23
up-and-coming
 227:25
upbringing 159:13
update 204:7 213:5,
 11 223:18 254:25

updates 230:15
 242:25 244:12
 252:15 253:18, 22
 259:8
upset 85:2 99:22, 23
USA 10:7
use 16:16 30:21
 31:12 39:9 64:15, 23
 65:9, 11 118:16
 119:24 120:4 143:12
 162:20 163:1 242:3
 253:20 257:13
usually 220:25 260:7

 < V >
validate 50:24
validation 51:3 53:8
value 44:6
valued 82:10
values 112:10
 139:20, 22 140:3
vanilla 200:9, 14
variables 165:12, 14
varied 28:15
various 24:8 148:1
 174:7 200:8
vary 28:15
vendors 174:8
venue 145:24 146:11
 162:14
verbal 21:24 22:8
verbally 6:22
verbatim 69:6
verify 33:6
version 204:10, 11
 205:17 222:25
 225:16 254:10
 259:10, 12, 14, 17
versus 4:6 15:19
 46:19 119:12 136:23
 166:15
vet 49:10 60:13
 200:18
vets 49:5
vett 48:10, 25 49:2
 50:15, 21 53:23
 56:20 60:10, 21
 66:24 67:15, 18 68:6,
 7, 9, 11 69:4, 25 70:9
 104:3 107:24 228:25

vetting 49:12, 14, 19
 50:1, 7, 9, 17 51:9, 10,
 11 54:15, 20 55:6, 15,
 18 56:14 57:24 60:1,
 6 67:6 68:1, 3 71:15,
 18 185:4
vice 30:14 110:9
video 4:16 6:21
Videoconference 2:4
VIDEOGRAPHER
 4:1 61:14, 17 114:17,
 20 155:7, 9 206:2, 4
 248:25
Videotaped 1:13
view 145:17 163:9
 169:1 212:12 237:20
 241:10
viewed 34:13 41:12
 42:10 171:11 205:22
 211:21
viewing 164:23
viewpoint 119:15
views 19:13 202:22
visibility 257:16, 18
visible 149:2
visiting 219:7
VOLUME 1:13
vote 101:16 102:7, 9
 103:11 106:7
votes 102:8 106:6
voting 14:24
vs 1:8 264:4

 < W >
wait 6:25 70:10
walked 68:22 70:24
 83:4, 8, 13 84:1
walking 258:19
walks 83:17, 21
Walnut 1:19
WAM 134:19 135:3
 136:19
want 15:14 19:14
 20:8 21:17 23:12, 24
 28:7 33:6 38:4
 39:17, 18 40:1, 18
 52:15 56:1 58:1
 65:6 78:8 85:4, 5
 94:17 104:19 105:2
 106:12 108:10, 13

112:4 114:11 116:21 117:6 134:22 135:15 146:13 171:4 175:17 176:13 177:25 180:19 181:20, 23 184:18 185:17 186:10 195:24 200:15 206:20 227:2 257:12 258:12, 13, 14 261:20 wanted 14:3 21:18 35:2, 22 36:6 38:24 39:13, 21, 23 40:24 41:14, 16 47:7 48:6 53:6, 9 54:9 61:4 73:20 78:9, 10 82:7, 8 86:5 94:9 104:10 142:18 179:9, 10 180:15, 24 182:1, 8 183:4 184:13, 16 185:7, 9 187:2 193:14 194:6, 7, 19, 20, 25 195:1 196:7, 9 197:6 203:1, 6 206:18, 21 208:1 210:2, 25 211:14 224:19 228:18 232:5 247:7 253:23 wanting 228:24 wants 34:11 66:8, 15 86:14 97:22 164:25 220:16 237:4 warrant 247:14 warranted 45:22 193:13 Warren 172:6 watch 104:10 watching 236:17 way 8:18 31:5 52:17 53:21 56:22 58:19 68:8 70:10 85:7 90:25 91:5 104:15 105:13 110:21 133:2 139:1 144:12 145:16 162:7 164:24, 25 165:1 171:3, 13, 18 173:2 182:4 205:22 211:4 212:14 232:2 236:4 237:10, 20 238:19	241:2 246:17 258:16, 21 weakness 240:14 241:11 242:11 248:14 weaknesses 123:18 190:7, 19 234:13 237:5 wealth 108:22 109:23, 24 110:8, 12 111:24 115:7 120:14 128:4, 10 130:15 133:7 134:9, 10 141:2 199:25 249:21, 25 Wednesday 83:18 week 16:13 68:21 202:11 253:25 255:1, 13, 16, 18 256:15, 16 weeks 68:20, 21 204:23 220:20 230:18 254:2 weight 74:10 Well 11:18 13:24 18:11, 25 21:24 24:16 25:3 26:9 31:17 35:8 43:24 48:16 51:21 53:5 62:17 71:20 72:14 84:25 111:7 114:8 118:7 119:3 122:7 139:16 141:23 145:17 147:14, 21 150:24 151:2, 5, 8, 9, 12 153:23 157:23 172:17 179:21 180:7 190:2 195:15 198:23 199:1 200:4 202:5 203:21 207:13 214:2 225:19 230:17 231:16 255:14 256:10 well-being 87:15 went 12:5 27:25 46:19 121:4 131:6 151:2, 5, 7, 9 157:22 198:22 203:21 211:5 We're 4:2 6:21 19:3 25:10 33:24 61:14, 18 62:6 78:7	86:19 91:22 103:17 114:17, 20 118:2 125:15 128:8 138:14 146:9 149:7 155:9 188:9 189:22 203:3 204:25 205:1, 10 206:4 210:12 230:17, 18 233:4 236:2 248:25 WESTERN 1:3 4:5 we've 4:25 26:12 38:10 76:23 116:7 123:11 172:4 174:7 193:11 216:11 237:7 238:5, 12, 19, 20 251:24 Wharton 2:4 4:22 whatsoever 166:19 169:19 171:10 173:24 256:23 WHEREOF 263:12 white 173:12 widely 54:16, 17, 19 wife 7:11 80:20 83:16 169:14 Williams 50:11 253:16 254:10 willing 61:7 184:14 187:4 194:17, 20 window 110:2 winning 55:1 WITNESS 8:22, 25 33:23 39:11 47:3, 25 50:7 52:20 54:3 57:11, 20 59:23 62:5, 22 63:14 64:19 66:3 70:17 76:4 79:4 80:7, 9 87:9 89:9 90:8 95:2 96:12 97:7 98:16 100:24 103:18 105:3 106:1 107:9 112:7 114:7 125:7 126:5 131:22 138:22 139:14 158:10, 20 160:24 164:17 165:8, 21 167:6 168:20 170:7, 13, 20 171:6 173:8 175:9, 20 191:25 195:5, 9 206:14	210:15 214:23 215:2 218:8 226:20 263:12 witnesses 152:13, 16 witness's 95:5 woman 157:25 158:7 wondering 70:6 word 39:10, 15 40:3 48:5 51:19, 21 52:9 85:1, 12 119:23, 24 120:4 122:19 225:11 233:24 247:17 251:12 255:7 wording 84:25 94:4, 5 words 50:5 work 20:24 36:1, 6 39:14, 18, 21, 24 40:2, 10, 13, 19, 22, 23, 24 41:16, 20 45:18 47:7 48:6 66:8, 15 71:2 74:13 82:16, 18 83:4, 6, 24 87:11 88:4 99:3, 7 118:2 119:4 133:21 140:3 145:13 148:19 199:24 202:12 203:6 239:22 247:21 worked 97:24 156:22 190:2 239:20 243:12 workforce 219:2 working 20:4 25:16 35:24 44:2 79:21 127:2 146:10 201:5 workplace 94:10 161:8 170:17 173:1, 17 174:3 219:3 works 20:5 144:13 212:14 world 147:20 worry 162:16, 17 write 58:9 69:5, 17 77:21 84:25 236:23 writing 22:5 35:15 58:5 74:21 77:9 78:3 79:24 164:7, 9, 10 165:2 191:21 192:19, 22 193:3 236:7, 11, 12, 15 238:4 241:5 242:14
---	--	---	---

written 39:3 41:2
 54:18 173:20
wrong 109:8
wrote 112:8 139:9
 141:18
 < Y >
Yeah 8:21, 23 54:1
 89:7 114:16 119:20
 122:21 133:8 135:4
 149:6 158:24 170:20
 172:19 195:20, 22
 197:10, 15, 19 203:11
 205:4 222:20 234:1
 262:3
year 9:24 12:3, 23
 16:2, 12 17:10 19:17
 20:11 21:11, 16 24:8
 28:5 32:12, 13 35:9,
 11 48:18, 20 75:16
 81:9 93:19 101:3, 8
 106:12 108:7 109:1
 112:2 113:5 116:10,
 23 117:24 120:14
 121:5, 13 129:10, 11
 133:13 136:18, 24
 154:22, 23 156:9, 16
 163:17, 18 174:11
 178:1 179:18 180:2
 188:11 197:23, 24
 203:22 211:22 212:7
 226:11 233:12
 236:14 257:11
years 7:9, 13 28:16
 30:20 31:12 35:24
 36:1, 7 38:24, 25
 39:7, 14, 18, 20, 22, 23,
 24 40:1, 2, 11, 13, 17,
 19, 22, 23, 24 41:16,
 20 45:19, 22, 24 47:7
 48:6 62:23 66:9, 16
 101:4, 9 104:3, 4
 106:20 108:7 109:22
 111:9 112:6 124:13
 131:24 145:10 146:1,
 8, 12, 15 147:2 153:7
 154:2 157:11 163:20
 169:13 172:5, 6
 183:24 184:9 190:9
 194:6 195:1 205:4

211:23 212:8 215:18
 216:20 218:12, 13
 219:8, 18, 20 221:19
 222:13, 14 223:4, 5
 226:10, 11 227:13, 15,
 22 228:3, 4, 5 231:16
 234:4 236:18 238:20
 241:19 243:6, 7, 10,
 11, 13, 16, 25 244:1
 247:2, 10 252:20, 21
 256:5
year's 136:8 177:25
 231:19, 20
Yep 113:7
yesterday 9:10
York 156:21, 22
young 184:7
 < Z >
Zaunbrecher 8:11, 14
 71:24 84:4 153:13,
 14
Zoom 4:16, 19, 20